



**Munyanya v Oketch & another (Environment and Land Miscellaneous Application
E014 of 2022) [2022] KEELC 12798 (KLR) (4 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 12798 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2022
DO OHUNGO, J
OCTOBER 4, 2022**

BETWEEN

EVERLYNE ADHIAMBO MUNYANYA APPLICANT

AND

LUCAS OKETCH 1ST RESPONDENT

MATHEWS TONADO 2ND RESPONDENT

RULING

1. By notice of motion dated April 25, 2022, the applicant seeks the following orders:
 1. That the proposed appellant be granted leave to appeal out of time against the whole judgement of the Senior Principal Magistrate Hon TA Obutu (SRM) delivered on December 22, 2021 at Kakamega.
 2. That the notice of appeal and memorandum of appeal annexed hereto be deemed as duly filed and served.
 3. That the costs of this application be provided for.
2. Although prayer 2 of the application refers to a judgement delivered on December 22, 2021 at Kakamega, it is apparent from the material on record that the applicant is referring to a judgment delivered on December 22, 2021 at Mumias in Mumias MELC No 18 of 2021 Everlyne Adhiambo Munyanya v Lucas Oketch and Another.
3. The application is supported by an affidavit sworn by the applicant. She deposed that upon delivery of the judgement, she sought review pursuant to her then advocate's advice. That the subordinate court reviewed the judgement and ordered that the appellant surrender's her deceased father's remains to her uncle Dominic Muganda for burial in Busia. That the time allowed to appeal has since lapsed but this court has the power to enlarge such time.



4. The respondents filed grounds of opposition in which they raised the following grounds:
 1. That the appeal is filed in High Court whereas the issues for determination is about land and hence jurisdiction is denied.
 2. That there is no competent appeal intended to be filed since the grounds touch both on the main suit dismissed on December 22, 2021 and subsequent application for review determined in March 2022.
 3. That there is no jurisdiction for filing the intended appeal out of time since the appellant/ applicant decided to have the judgement questioned reviewed as opposed to filing appeal in good time which choice she made.
 4. That in the subsequent appeal, one of the brothers to the deceased volunteered to take the body and bury same on a family land in Busia, a prayer which was accepted and can be implemented.
5. The application was canvassed through written submissions. The applicant identified two issues for determination: whether an appeal can be preferred where there has been review and whether the proposed appeal is meritorious. On the first issue, the applicant blamed her previous counsel for what she termed an erroneous and misguided decision to seek review which cost her delay. She cited article 159 of the [Constitution](#) and urged the court to disregard procedural technicalities so as to ensure that substantive justice is not sacrificed. On the second issue, as to whether the proposed appeal is meritorious, the applicant argued that the sole ground of appeal is that Cosmos Munyanya (deceased) is the absolute proprietor of the parcel of land known as South Wanga/ Bungasi/537 consequently his remains should be buried in the said parcel in view of a proprietor's rights under article 40 of the [Constitution](#) and section 26 of the [Land Registration Act](#). The applicant relied, inter alia, on the cases of [Julius Ochieng Oloo & another v Lilian Wanjiku Gitonga \[2019\] eKLR](#) and [Mark William Trevor Price & Caroline Elsa Anne Sturdy vs John Greaves Hilder \[1984\] eKLR](#).
6. The respondents argued that if the application were to be allowed, this court would find itself sitting on an appeal arising from a case in which the court has no jurisdiction. They further argued that beyond blaming her advocate, the applicant does not have a valid reason why she failed to file an appeal within time. They urged the court to dismiss the application with costs.
7. I have considered the application, the supporting affidavit, grounds of opposition and the submissions. The issues that arise for determination are whether this court has jurisdiction and if so whether the orders sought should issue.
8. Jurisdiction is the very lifeblood of any proceedings. Without it, the proceedings come to a certain end and the court cannot make any further step. See [Owners of the Motor Vessel 'Lillian S' v Caltex Oil \(Kenya\) Ltd \[1989\] eKLR](#). The Supreme Court emphasised the importance of jurisdiction in [Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others \[2012\] eKLR](#) where it stated as follows:

A court's jurisdiction flows from either the [Constitution](#) or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the [Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.
9. The Court of Appeal emphasised the importance of jurisdiction when it recently stated in [Phoenix of EA Assurance Company Limited v SM Thiga t/a Newspaper Service \[2019\] eKLR](#) as follows:

Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a



compliant one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the court cannot confer jurisdiction to itself.

10. Pursuant to article 162(2) (b) of the [Constitution](#) of Kenya, the jurisdiction of this court is to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. Further provisions on the court's jurisdiction are found at section 13 of the [Environment and Land Court Act](#), 2011 which provides:

13. Jurisdiction of the court

- (1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with article 162(2) (b) of the [Constitution](#) and with the provisions of this act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under article 162(2) (b) of the [Constitution](#), the court shall have power to hear and determine disputes—
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.

11. Consequently, the court has jurisdiction in matters to do with the environment and the use and occupation of, and title to, land as well as in matters concerning redress of a denial or infringement or threat to rights or fundamental freedom relating to a clean and healthy environment under articles 42, 69 and 70 of the [Constitution](#). The court also has wider jurisdiction when dealing with disputes involving environment and land, to resolve claims concerning breaches of other fundamental rights related to environment and land. See [Daniel N Mugendi v Kenyatta University & 3 others \[2013\] eKLR](#).

12. Pursuant to section 26 (3) and (4) of the [Environment and Land Court Act](#), 2011 and section 9 (a) of the [Magistrates' Courts Act](#), 2015, duly gazetted magistrates have jurisdiction to hear and determine cases to do with the environment and the use and occupation of and title to land, subject to pecuniary jurisdiction. Parties who are dissatisfied with decisions made by magistrates in the exercise of the jurisdiction have a right of appeal to this court.

13. This court's appellate jurisdiction is circumscribed by sections 13 (1) and 16A (1) of the [Environment and Land Court Act](#), 2011. Section 16A (1) provides:

All appeals from subordinate courts and local tribunals shall be filed within a period of thirty days from the date of the decree or order appealed against in matters in respect of disputes falling within the jurisdiction set out in section 13(2) of the [Environment and Land Court Act](#).



14. Thus, appeals from subordinate courts to this court can only be in respect of decisions made under section 26 (3) and (4) of the *Environment and Land Court Act*, 2011 and section 9 (a) of the *Magistrates' Courts Act*, 2015.
15. The question that emerges is whether the judgment delivered on December 22, 2021 at Mumias in Mumias MELC No 18 of 2021 Everlyne Adhiambo Munyanya v Lucas Oketch and Another was delivered pursuant to section 26 (3) and (4) of the *Environment and Land Court Act*, 2011 and section 9 (a) of the *Magistrates' Courts Act*, 2015. I have perused the said judgment, which is on record. The dispute did not concern the environment, the use and occupation of land or title to land. Although some parcels of land were mentioned, the dispute, as placed before the subordinate court did not disclose any case under section 26 (3) and (4) of the *Environment and Land Court Act*, 2011 and section 9 (a) of the *Magistrates' Courts Act*, 2015. It follows therefore that no appeal against the judgment delivered on December 22, 2021 would lie to this court. This court does not therefore have any appellate jurisdiction in respect of the judgment.
16. A court of law does not act in vain. A suit or application filed in a court devoid of jurisdiction is dead on arrival and cannot be remedied. See Phoenix of EA Assurance Company Limited v SM Thiga T/ A Newspaper Service (supra).
17. In view of the foregoing discourse, notice of motion dated April 25, 2022 is struck out. Considering that the parties are members of one extended family, I make no order as to costs.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 4TH DAY OF OCTOBER 2022.

DO OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Shivega holding brief for Ms Repha for the applicant

No appearance for the respondents

Court Assistant: E Juma

