



REPUBLIC OF KENYA



**Kunyori v Nderu (Civil Appeal E1187 of 2024)  
[2025] KEHC 8309 (KLR) (Appeals) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8309 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
APPEALS  
CIVIL APPEAL E1187 OF 2024  
WM MUSYOKA, J  
JUNE 13, 2025**

**BETWEEN**

**MICHAEL MARANGA KUNYORI ..... APPELLANT**

**AND**

**JOSEPHINE MUKAMI NDERU ..... RESPONDENT**

*(Appeal from judgement and decree of Hon. SA Opande, Principal Magistrate,  
PM, in Milimani CMCELC No. E1599 of 2020, of 1st October 2024)*

**JUDGMENT**

1. These appellate proceedings arose from environment and land proceedings before the primary court, in Milimani CMCELC No. 1599 of 2020. In the plaint, the appellant sought a permanent injunction to prevent sale and transfer of landed property, a mandatory injunction to compel delivery of vacant possession of landed property, and general damages for trespass. Clearly, the suit, in Milimani CMCELC No. 1599 of 2020, turned on title to and occupation of land.
2. Article 162(2) of *the Constitution* envisages a court, with status equivalent to that of the High Court, with jurisdiction to handle disputes relating to title to land, use and occupation of land. Article 162(3) of *the Constitution* commands Parliament to establish such a court, and to determine its jurisdiction. Parliament harkened to Article 162(3) of *the Constitution*, and established such a court, under the *Environment and Land Court Act*, Cap 8D, Laws of Kenya, and set out its jurisdiction in that Act.
3. Article 165(5) of *the Constitution* declares that the High Court has no jurisdiction, over the disputes, allocated by Article 162(2), to the courts contemplated under that Article.
4. The dispute, in Milimani CMCELC No. 1599 of 2020, was over a dwelling house, with respect to its ownership and occupation. A dwelling house stands on or is affixed to land. Ownership is of the land,



together with anything standing on it, including the house. Ownership is never on the house but the land, except in limited cases under Islamic law. Islamic law does not apply to this case.

5. The High Court has no jurisdiction, by virtue of Articles 162(2) and 165(5) of *the Constitution*, on a dispute over title to, and use or occupation of land, whether in primary or in appellate proceedings. I have no jurisdiction to deal with the appeal herein, in the circumstances.
6. The Owners of Motor Vessel “Lillian S” vs. Caltex Oil Kenya Limited [1989] KLR 1653 [1989] eKLR (Nyarangi, Masime & Kwach, JJA) declared on what a court should do, once it finds itself faced with a matter where it is bereft of jurisdiction. It downs its tools. That is what I hereby do.
7. Equity Bank Limited vs. Bruce Mutie Mutuku t/a Diani Tour Travel [2016] eKLR (Makhandia, Ouko & M’Inoti, JJA) and Albert Chaurembo Mumbo & 7 others vs. Maurice Munyao & 148 others [2019] eKLR [2019] KESC 83 (KLR) (Mwilu, DCJ&VP, Ojwang, Wanjala, Ndungu & Lenaola, SCJJ) hold that a court, faced with a suit filed at the court without jurisdiction, cannot transfer the suit, as that suit would be incompetent, and the court ought not transfer incompetence.
8. The only option left to me is to strike out the appeal herein, for being incompetent, having been filed before an incompetent court, which striking out I hereby do. The respondent shall have the costs, for being dragged to a court which has no jurisdiction. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 13<sup>TH</sup> DAY OF JUNE 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Ms. Carolyn Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Mutali, instructed by Mutali Wanyama & Company, Advocates for the appellant.

Mr. Njugi, instructed by Njugi BG & Company, Advocates for the respondent.

