



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mukungi v Fortune Sacco Ltd (Civil Appeal E064 of 2023)
[2025] KEHC 7909 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7909 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E064 OF 2023
JK NG'ARNG'AR, J
JUNE 5, 2025**

BETWEEN

BEATRICE WAMBUI MUKUNGI APPELLANT

AND

FORTUNE SACCO LTD RESPONDENT

JUDGMENT

1. The appellant being dissatisfied with the whole decision of the lower Court at Kerugoya by Hon. G. Waithira, Resident Magistrate on 30th June, 2023 filed a memorandum of appeal dated 28th July, 2023 the crunch of the case is based on the following main grounds: -
 - a. That the learned Magistrate erred in law and fact by misapprehending the facts, applying wrong legal principals and arriving at the wrong decision to the prejudice of the Appellant.
 - b. That the learned Magistrate erred in law and fact in dismissing the Appellant's summons for revocation of grant without judicial adjudication to substantial issues of law and fact raised by the Appellant.
 - c. That the learned Magistrate violated the principles of fair trial and protection of the law under Articles 25(c), 27(1),50(1) and Article 159 of the Constitution.
 - d. That the learned Magistrate erred in law by failing to appreciate that the Appellant's Summons for revocation of grant dated 5th May, 2021 had raised triable issues and it was the in error to dismiss the Appellant's Summons for Revocation of Grant.
 - e. That the learned Magistrate erred in law and fact by failing to consider the grounds upon which the Appellant's application was premised as grant was obtained fraudulently by concealment of the material particulars and making of a false statement ; that the grant was obtained by



means of untrue allegation of facts essential in points of law to justify the grant; and that the proceedings to obtain the grant were defective in substance.

- f. That the learned Magistrate erred in law and fact by failing to consider Section 76 (a-e) of the *Law of Succession act* circumstances under which a grant can be revoked and the Appellant had produced original titles for L.R No. Mutira/Kanga/701 and Mutira/Kanga/702 in court
- g. That the learned Magistrate erred in law and fact by failing to appreciate that the grant made to the Respondent herein having been obtained in contravention of the provisions of Section 76 of the *Law of Succession act* by virtue of the same having been obtained fraudulently by making of a false statement and by concealment from court of something material to the case by means of an untrue allegation of fact essential in point of law to justify the grant as illustrated by the following actions:
 1. Reuben Kimani Muiruri the then 3rd Plaintiff (now deceased) was the advocate in succession cause no. 10 of 2006 at Muranga principal Magistrate court and also one of the beneficiaries
 2. Reuben Kimani Muiruri the then 3rd Plaintiff (now deceased) was the Advocate in *Civil case No. 101 of 2009* in the Senior Principal Magistrate court at Kerugoya and also one of the Plaintiffs.
 3. Reuben Kimani Muiruri the then 3rd Plaintiff (now deceased) was the Advocate in formerly civil suit no. 112 of 2010 in the Senior Principal Magistrate court at *Kerugoya(ELC suit No. 743 of 2013* in the Environmental and Land) and also one of the Plaintiffs.
2. It is alleged that the lower court failed to appreciate that LR. NO Mutira/KangaI/634 did not exist after the late Wagateri maria Gatandi sold it, sub-divided to L.R No. Mutira/Kanga/701 and Mutira/Kanga/702 in 1973. That upon sub-division LR. NO Mutira/KangaI/634 ceased to exist as it gave rise to .R No. Mutira/Kanga/701 and Mutira/Kanga/702.
3. It is further alleged that the lower court failed to appreciate the purported cancellation of LR. NO Mutira/KangaI/634 on 20/04/2007 and entries of the names of the Plaintiffs in formally no. 112 of 2010 in the Senior Principal Magistrate court at Kerugoya (*ELC suit No. 743 of 2013* in the Environmental and Land Court) in the green card and purported registration of confirmation of grant issued in succession cause no. 10 of 2006 at Muranga to Wanjiru Erasto Muratha registered between 13th April, 2007 and 17th April, 2007 at the Lands office.
4. That before cancellation of L.R No. Mutira/Kanga/701 and Mutira/Kanga/702 and subsequently transferred to Peter Karimi Ndugutu on 10th November, 2010 was fraudulent since the cancellation of L.R No. Mutira/Kanga/701 and Mutira/Kanga/702 was done in 2009.
5. That there was an error in the lower court failing to revoke the grant issued on 23rd March 2007 Wanjiru Erasto Muratha On 23rd March, 2007 which was tainted with fraud, illegalities and misrepresentation. It is further claimed that the lower court failed to be independent and impartial to the prejudice of the appellant.

The Appellant aver that this court is entitled to re-evaluate the entire evidence and draw its own conclusion.
6. In finality the Appellant prays for the following orders:
 - i. That the Ruling delivered on 30th June, 2023 be set aside.



- ii. The Honorable court be pleased to revoke the certificate of confirmation of grant issued to Wanjiru Erast Muratha on 23rd march, 2007 which was tainted with fraud, illegalities and misrepresentation.
 - iii. Right to fair trial under Article 22(3), 25(c), 50(1), 159(2)(a)(d)(e) of the Constitution of Kenya were violated, infringed and denied.
 - iv. That the Court be pleased to issue any such further order it deems fit and convenient taking the exceptional circumstances of this case into account.
7. From the record the Appellant claims to be the the legal widow of Patrick Mukungi Ruriga Njiru whdo died on 15th February, 1990. She contends that the deceased was the Legal owner o L.R No. Mutira/Kanga/634 which was later subdivided during his lifetime into L.R No. Mutira/Kanga/701 and Mutira/Kanga/702. It is claimed that L.R No. Mutira/Kanga/701 was sold to the Applicant's late Husband and L.R No. Mutira/Kanga/702 was gifted to her by the deceased.
 8. The Applicant also lays a claim that the Respondent's counsel Reuben Muiruri Kimani presented forged documents and misled the court in *Succession Cause No. 110 of 2006*. She also claims that the advocate had benefitted in the succession case by listing himself as a beneficiary and later together with others file Civil suit no. 112 of 10 at Kerugoya. For this reason, she moved the court with a quest of revoking the grant.
 9. The Respondent in her response swore an affidavit averring that she is the sole widow of the deceased and pointed out that applicant was not related to the deceased in any way. She denied the claim that parcel no. 634 had been sub-divided into two portions or that the deceased had donated land to the applicant.
 10. The respondent further contended that upon registration of the Certificate of confirmation of grant, a title deed was issued to the beneficiaries. She also admitted that her advocate Reuben Muiruri Kimani was one of the registered proprietors since he had purchased a portion of land from her.

Analysis And Determination

11. I have carefully considered this appeal as well as the written submissions filed by the parties.
12. This is a first appeal, thus it is the duty of this court to re-evaluate and review the evidence adduced in the lower court and to draw its own conclusions on the same.

In *Selle & Another v Associated Motor Boat Company Limited & Others*[1968] E. A 123, the court of Appeal held that;-

“An appeal to this court from trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings or fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally



13. The issue for determination here is whether the decision of the trial court that the issue in question could be heard and determined by the Succession Court was a correct finding which ought to be allowed to stand. And whether the appeal is merited.
14. Indeed, the issue raises a question of jurisdiction. It is trite that jurisdiction is everything. In *Owners Of The Motor Vessel 'Illian S' v Caltex Oil (kenya) Ltd* Civil Appeal No. 509 1989 the court of Appeal held that:-“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”
15. Jurisdiction relates to the mandate and/or authority of a court to hear and determine the matter before it. It is derived from the constitution of Kenya and from statute.
16. The question which arose before the learned trial magistrate was whether the court sitting as a Succession Court had the jurisdiction to determine whether or not the land in question was held was fraudulently acquired, sub-divide or wrongly registered.
17. The key issue in this matter is the question of ‘ownership’ of the land in question. The Respondent contends that the land belonged entirely to the Deceased whilst the Appellant insists that the Deceased in his lifetime sub-divided the land during his lifetime and sold to her husband and gifted her the other portion. This in my view is a critical question that required determination before the estate could be distributed.
18. The court in Kerugoya was sitting as a Succession Court with the mandate to oversee and supervise the distribution of the estate to the genuine heirs. Any dispute or claim to an asset of the estate by a third party can in law only be determined by the courts having jurisdiction to handle land matters.
19. It is manifest that the real dispute here is whether the suit property in question was sub-divided by the deceased or whether the Appellant could validly claim ownership of the same.
20. Matters relating to the ownership use and occupation of land have now under Article 162 of The *Constitution* of Kenya 2010 been mandated to be determined by a specialized court being the Environment and Land Court (‘ELC’). Further Section 13 of the *Environment and Land Court Act* provides for the jurisdiction of that court as follows:-

“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.”
21. 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;.
 - c. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and any other dispute relating to environment and land. [Rev. 2012] No. 19 of 2011 Environment and Land Court 9 [Issue 1]



22. Therefore, the correct and proper forum before which the Appellant ought to ventilate her claim to the suit property is the ELC. The Environment and Land Court is the only court exclusively mandated by law to determine the question of ‘ownership’ of the suit property. In Re Estate of Stone Kathubi Muinde (deceased)[2016] eKLR Hon. Justice William Musyoka held that:

“Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the Civil procedure Act and the Civil procedure Rules. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.” (see also the case of In re Estate of Julius Wachira (Deceased) [2022] eKLR)

30. In this regard the court is guided by the authority in Spinners & Spinners Limited v Spinners & Spinners Limited, [2017] eKLR in which Prof. Ngugi (J) observed;

“Kenya desired specialized courts to deal with certain matters that they felt should be dealt with by these courts with special expertise and repeated experience in the questions they deal with. What Kenya bargained for, and got in constitutionalizing the two Article 162 (2) courts are the benefits associated with the creation of specialized courts in environment and law (as well as employment relations and labour): improved substantive decision making in the two areas fostered by having experts decide complex cases in the two areas and improving judicial efficiency through decreasing the judicial time it takes to process complex cases by having legal and subject-matter experts with repeated experience on the subject matter adjudicate them. These were the advantages Kenya bargained for in creating Article 162 (2) Equal Status Courts.”

23. I am persuaded that the trial court’s observation that the dispute as it regards cancellation of the sub-division LR. NO Mutira/KangaI/634 lie truly outside the ambit of this court. The issues arising herein can be addressed by the court with such specialty.

24. For the reasons I have set out, I find that the ruling issued by the lower court on 13th January, 2023 is judicious and is hereby upheld. The appellant’s appeal is hereby dismissed with no orders as to costs.

Orders accordingly

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 5TH DAY OF JUNE, 2025 IN THE PRESENCE OF:

.....
J.K. NG’ARNG’AR

JUDGE

N/A for the Appellant

Wanjeiya for the Respondent

Siele/Mark (Court Assistants)

