



Gathua v Muya (Civil Appeal E40 of 2021) [2024] KEHC 2336 (KLR) (6 March 2024) (Judgment)

Neutral citation: [2024] KEHC 2336 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL E40 OF 2021**

J WAKIAGA, J

MARCH 6, 2024

BETWEEN

PATRICK MACHARIA GATHUA APPELLANT

AND

STANLEY MWANGI MUYA RESPONDENT

*(Being an appeal from the Ruling and Order of the Hon. S.K Nyaga
Resident Magistrate in Muranga CMCC No. 303 of 2019 on 5.8.2021)*

JUDGMENT

1. By a plaint dated 23rd September 2019, the Appellant sued the Respondent for general and special damages arising from an assault and or physical attack on 8th October 2016 as a result of which the Appellant sustained severe injuries. The Respondent did not file a defence and interlocutory judgement dully entered against him.
2. By a judgement thereon dated 12th October 2020, the Court entered judgement for the Appellant for the sum of Kenya shillings five hundred and nine thousand (Kshs 509,000) for general and special damages and a decree thereon issued.
3. By an application dated 29th April 2021, the Appellant moved the Court for execution of the decree by way of attachment and sale by public auction of the Respondent's property known as Loc.15/ Gathukeini/941 and by a Ruling thereon dated 5th August 2021, the Court declined to exercise jurisdiction on the basis that the subject matter was dealing with land and therefore the Court lacked jurisdiction.
4. Being dissatisfied by the said Ruling, the Appellant filed this appeal and raised the following grounds of appeal:
 - a. The Court erred in finding that what was before her was a land matter.



- b. The Court failed to consider and abide by Section 44(1) of the *Civil Procedure Act*.

Submissions

5. Direction were given on the hearing of the appeal by way of written submissions and on behalf of the Appellant it was submitted that the Court failed to consider Section 44(1) of the *Civil Procedure Act* which provides that all the property of the judgement debtor shall be liable to attachment and sale in execution of a decree. The Respondent did not file grounds and neither did he file written submissions.

Determination

6. The only issue for determination in this matter is whether the trial Court had jurisdiction. Put different is whether the issue before the Court was a land matter, which should have been handled by the designated land Court.
7. From the material placed before the Court, it is clear that what was before the Court was an issue of the execution of a decree issued from the judgement of the Court and not the use and ownership of land which is the subject of the land Court which is provided for under Article 162(2) of the *Constitution* and Section 13(2) of the *ELC Act* which provides that the ELC Court has powers to hear and determine disputes relating to environment, land use, planning title etc.
8. It is clear that in declining to exercise jurisdiction the magistrate fell into error as the issue before her was not on the ownership but on the execution of under Order 21 of the *Civil Procedure Act*.
9. It therefore follows that the appeal has merit which I hereby allow and set aside the order of the Court declining to exercised jurisdiction. Since no substantive Order had been made by the Court, I hereby direct that the file be placed before another magistrate rather than Hon S.K. Nyaga for further proceedings and conclusion of the execution process.
10. I make no order as to cost at this stage since the appeal was undefended.

SIGNED, DATED AND DELIVERED AT MURANGA THIS 6th DAY OF MARCH 2024.

J. WAKIAGA

JUDGE

In the presence of:

Mr. Njenga M. for Mr. Mbuthia for Appellant

Stanley Mwangi Muya – Respondent

Jackline – Court Assistant

