



Nganga v Nganga (Civil Appeal 14 of 2017) [2024] KEHC 7780 (KLR) (1 July 2024) (Ruling)

Neutral citation: [2024] KEHC 7780 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL 14 OF 2017**

PN GICHOHI, J

JULY 1, 2024

BETWEEN

DANIEL NDUNGU NGANGA APPELLANT

AND

JOSEPH MBUGUA NGANGA RESPONDENT

(Being an appeal from the judgment of the Honourable Magistrate Principal Magistrate M.K.N Maroro in Nakuru CMCC No 325 of 2013 delivered on 20th December, 2016 at Nakuru)

RULING

1. The background of this appeal is that the Appellant sued the Respondent before the Nakuru Chief Magistrates Court vide a plaint dated 24th April, 2013 where he pleaded that she is the registered proprietor of all that parcel of land known as Bahati/Bahati Block 1/685 and has a Land Certificate to that effect given on 5th October, 1984.
2. He averred he allowed the Respondent to occupy the land as a relative up to the year 2007 when he asked him to vacate and move to his own land in Karuga, Gilgil. He averred that the Respondent promised to vacate but has refused to do so despite being given written notice dated 5th February, 2013.
3. The Appellant therefore prayed for judgment against the Respondent for:

“An order directing the defendant and all those claiming under him to vacate all that parcel of land known as Bahati/ Bahati Block 1/685 immediately.”
4. The Respondent filed an Amended Statement of Defence dated 16th March, 2015 and denied that the Appellant is the registered proprietor of all that land known as Bahati/Bahati Block 1/685. He pleaded that the Appellant holds the said land in trust for the family of Philis Wanjiru alias Philis Njeri who is the mother to the parties. He further listed the particulars of the trust and the particulars of breach of trust.



5. In its judgment dated 12th December 2016, the trial court held:

“I have perused the submissions by both parties. The issue in counter claim is a) Whether the said land was a trust land held by the plaintiff on behalf of the family. In the evidence of the defendants and that of plaintiff it is clear that the Defendant stayed in the said land since 1984 with a notion that it was family land.

The Defendant was content hence his quiet enjoyment. I do find that the Plaintiff has not proved his case on a balance of probability and will dismiss the suit with no orders as to costs. Orders accordingly.”

6. Aggrieved by that judgment, the Appellant preferred this appeal vide the Memorandum of Appeal dated 6th February, 2017 on the following grounds:-

1. That the learned trial magistrate lacked requisite jurisdiction to determine the matter.
2. That the Trial learned Magistrate misdirected herself and apparently erred in law when she delivered her judgment without jurisdiction.
3. That the learned trial Magistrate erred in law and fact by failing to state concise statement of the case, the points for determination, the decision thereon and the reasons for her findings as required by the law.
4. That the learned trial magistrate erred in law and fact by failing to state here finding or decision, with the reasons therefore, upon each separate issue, having been framed as required by the law.
5. That her decision was arrived at a consideration based on wrong principles of law.
6. That the trial learned Magistrate lacked jurisdiction to determine the matter at the time.

7. The Appellant therefore urged prayed that:-

1. The appeal be allowed by setting aside judgment in Nakuru CMCC No 325 of 2013.
2. Nakuru CMCC No 325 of 2013 proceed from where it had reached, upon the trial court being clothed of jurisdiction.
3. Costs of this Appeal be provided for.

8. Pursuant to directions taken that the appeal be heard by way of written submissions, the Appellant filed his on 22nd January, 2024 and identified the following issues for determination:-

1. Whether the trial court at the time of hearing and delivery of judgment had jurisdiction to try the suit.
2. Whether the judgement dated 20th December, 2016 was a sound and lawful judgment.

9. The Appellant submitted that at the time Nakuru CMCC No. 325 of 2013 was filed on 16th May, 2013, the magistrate's courts lacked the jurisdiction to hear and determine matters in relation to title to land following the enactment of the *Environment and Land Court Act*, Act No 19 of 2011.

10. It was further submitted that Section 2 of the Statute Law Miscellaneous Act No. 25 of 2015 amended several laws including the *Environment and Land Court Act* with a view to conferring the Magistrates courts with authority to hear and determine disputes relating to the environment and the use and occupation of, and title to land. In support, reliance is placed on *Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others* [2017] eKLR among others.



11. The Appellant further submitted that for a judgment to be considered sound and lawful, the same should comply with the requirements of law in relation to the attributes of a good judgment. While relying on Order 21 rule 4 of the Civil Procedure Rules, the Appellant submitted that the judgment dated 20th December 2016 only reiterated the testimonies of the witnesses and proceeded to dismiss the suit without giving the rationale behind the court’s decision.
12. On his part, the Respondent filed submissions on 20th February, 2024 where he submitted on the following issues:-
 1. Whether the trial magistrate lacked jurisdiction to determine the matter?
 2. Whether the trial court failed to give reasons for the decision and arrived at her decision based on wrong principles of law?
13. On the first issue, the Respondent submitted that the issue of jurisdiction was not dealt with and or even raised before the trial court and therefore, the Appellant is estopped from raising the same in the appeal. It was submitted that the mere fact that the judgment was not long does not mean that it did not have the required elements.
14. He submitted that the mere fact that the Appellant filed a Statement of Defence did not bar the trial court from deducing and coming up with its issues as per the evidence before the court. The Respondent relied on Section 28 of the Land Registration Act and cited several cases in support of that argument.

Determination

15. After considering the material placed before this Court, it is clear that the dispute before the lower court is predominantly a land issue being Bahati/Bahati Block 1/685. For emphasis, the Environment and Land Court was established pursuant to Article 162 (2) of the Constitution of Kenya which provides that :-

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to:

 - a. employment and labour relations; and
 - b. the environment and the use and occupation of, and title to, land.
16. Regarding this appeal, the appellate jurisdiction is well set out under the Environment and Land Court Act . Section 13 (1) thereof provides that:-
 - (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.”

17. In the circumstances, this court lacks jurisdiction to hear and determine this appeal and that may call for striking out of the appeal on that ground.

18. However, and considering that this is a year 2017 appeal, this Court is guided by Court of Appeal decision in Prof. Daniel Mugendi Vs Kenyatta University & Others, Civil Appeals No. 6 of 2012 where the stated: -

“And in order to do justice in the event where the High Court, the Industrial Court or the Environmental Land Court Division comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar and equal status should in the spirit of harmonization effect the necessary transfers among themselves....”

19. It is for the sake of justice, that this Court makes the following orders:-

1. The Civil Appeal No 14 of 2017 Daniel Ndungu Ng’ang’a vs Joseph Mbugua Ng’ang’a be and is hereby transferred to the Environment and Land Court, Nakuru for determination.
2. The file be urgently placed before the Presiding Judge of the Environment and Land Court Nakuru for further directions on hearing and determination of the appeal.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 1ST DAY OF JULY, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Ms Omondi for Appellant

Ms Wangari for Respondent

Ruto - Court Assistant

