



REPUBLIC OF KENYA



**Mwangi & 2 others v Kinyanjui (Civil Appeal 46 of 2019)  
[2023] KEHC 1899 (KLR) (6 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1899 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL 46 OF 2019  
JM CHIGITI, J  
MARCH 6, 2023**

**BETWEEN**

**SUSAN NJERI MWANGI ..... 1<sup>ST</sup> APPELLANT**

**NANCY NJERI WARUI ..... 2<sup>ND</sup> APPELLANT**

**ELIZABETH GATHIGIA MURIUKI ..... 3<sup>RD</sup> APPELLANT**

**AND**

**SUSAN NJERI KINYANJUI ..... RESPONDENT**

*(Being an appeal from the Ruling of the Chief Magistrate's Court at Thika  
(Hon. A.M Maina) delivered on 12/03/2019 in Thika CMCC No. 373 of 2018)*

**JUDGMENT**

**Brief Background:**

1. This is an Appeal challenging the ruling of the Chief Magistrate's Court at Thika (Hon. A.M Maina) delivered on 12/03/2019 in Thika CMCC No. 373 of 2018 where the Magistrate's court in the said ruling struck out the Appellants defence dated 29<sup>th</sup> May 2018, and proceeded to enter judgment in favour of the Respondents against the Appellants as prayed in the Plaint.
2. At all material times relevant to this suit the Appellants were the alleged registered owners of land parcel number Ruiru East/juja East Block 2/1535 measuring 1.273Ha or thereabouts.
3. On or about the 26<sup>th</sup> day of September 2014 the Respondent purchased land parcel Ruiru East/juja East Block 2/1535 at the all-inclusive sum of Kshs. 4,500,000 (four Million five hundred thousand shillings) which sum was deposited in full in the vendors account no. 01109156414300 in the name of Provident Ladies and further paid Kshs. 6,500 being the legal fee for the sale agreement.



4. The Appellants thereafter obtained Land Control Board consent to transfer the property to the Respondent and signed all transfer documents and handed over the original deed and identity card and P.I.N Certificate copies to the Respondent so as to enable her transfer the parcel of land into their name.
5. The Respondent then proceeded to take possession of the suit property after the transfer of the parcel land was duly executed and a title deed in her name generated on 24<sup>th</sup> October, 2014.
6. Things took a turn in the month of November 2014 when the Respondent proceeded to subdivide the parcel of land into small plots with a view to sell only for another party to emerge claiming ownership of the land as a result of which the Respondent reported the issue to the Appellants.
7. The Respondent moved to court and in the statement of Defence dated 29/5/18 the Appellants denied liability and put the Respondent to strict proof on all allegations.
8. In the Ruling of the Chief Magistrate's Court at Thika (Hon. A.M Maina) delivered on 12/03/2019 in Thika CMCC No. 373 of 2018, the trial court struck out the suit precipitating this appeal.
9. The Appellants in challenging the Ruling filed a memorandum of Appeal dated 14/3/2019 raising the following grounds:
  - a. That the Learned magistrate erred in law and in fact by presuming the content of paragraph (9) was not denied while in essence paragraph (1) of the defence precludes all averments as may be contained in the plaint and denied in total.
  - b. That the learned trial magistrate erred in law and in fact by totally ignoring the denial of loss and damage suffered as rebutted in the defence clause (6) in relation to interest and figures as alleged Kshs. 7,146,500/-. By this sheer fact the defendants raised Triable issues which court and trial magistrate ought to have considered at the hearing stage.
  - c. That the learned trial magistrate erred in law and in fact in that being cognizant of the fact that this was land which had been transferred regularly to the respondent herein on 24<sup>th</sup> September, 2014 but fraud is claimed in 2019 without comment as regards re-transfer. This is a triable issue court and trial magistrate ought to have considered and place matter to full hearing.
  - d. That the trial magistrate erred in law and fact by ignoring, disregarding the fact that breach as alleged in the plaint paragraph (10) cannot be attributed to the Appellants herein whereas in paragraph (6) of the plaint the respondent admits taking possession and even stating she had the title transferred into her name. this fraud is denied in the defence and forms a fundamental issue for court to determine. The trial court erred.
  - e. That the trial magistrate erred in law and in fact by ignoring leading authorities presented to here in the submission, failing to make any commentary on those cases as regards their suitability or absence of relevance thereof; and in particular;
    - i. *Kenya Trade Combine LTD -vs- Shah* Appeal No. 193 of 199 (C.A)
    - ii. *DT Dobie & Co. LTD -vs. Muchina & another* (1982).
  - f. The trial magistrate ignored the superior court findings and hence erred in making a ruling based on no legal basis or authority.
  - g. That the learned trial magistrate's erred in law and fact by ignoring the provisions of Order 8 *Civil Procedure Rules* where before pre-trial parties are entitled to amend their pleadings.



- h. That generally the trial magistrate usurped the Applicants right to be heard where the allegations of fraud against the appellants have been denied and further basing the Ruling on the supporting Affidavit (more) than the defence as drafted and filed by the appellants herein.

### **Analysis and determination**

10. In order for me to render myself on the reliefs sought in the Appeal, I have to identify the issues. The following come out as the issues for determination:
- a. Whether this court has jurisdiction in the matter?
  - b. Whether the reliefs sought in the Appeal should be granted?
11. I have been guided by the principles set out in the case of in *Selle & Another vs. Associated Motor Boat Co Ltd & Others* [1968] EA in arriving at the determination in this appeal.
12. The court therein held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
13. This principle was enunciated thus:
- “...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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 itself 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...”
14. The Appellants filed and relied on the list of documents which listed the following:
- i. Sale Agreement dated 26<sup>th</sup> September 2014
  - ii. Title deed in favour of Plaintiff
  - iii. Official Search Ruiru East /Juja East Block 2/1535
15. The Respondent filed a witness statement dated 30/4/18 and a list of documents being:
- i. Sale agreement dated 26/9/2014.
  - ii. Payment details from 15/8/2016 to 3/4/2018
  - iii. Receipt for agreement payment Kshs. 6,500
  - iv. Transfer forms signed by the parties.
  - v. Letter of consent
  - vi. Copy of title deed in defendant’s name.
  - vii. Copy of title deed in Plaintiff’s name.
  - viii. Copy of demand letter addressed to the defendants.



16. The Ruling dated 12/3/2019 that is at the heart of the Appeal herein identified and highlighted the issues surrounding the said transaction.
17. From the said pleadings and documents it is clear that this was a transaction that touched on the issue of land. There is a clear;
  - a. Sale agreement
  - b. A title
  - c. Consideration
  - d. A land Control Board Consent
  - e. An official search
  - f. A transfer
18. I have analyzed and reevaluated the evidence and I have no doubt in my mind that the dispute revolves the question of the ownership of LR No. Ruiru East/JUja East Block 2/1535. The Respondent also raised concerns around fraud.
19. The Constitution under Article 165 provides for the powers of this Court as follows;-

“ Article 165

- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice”

**The 1<sup>st</sup> issue:**

20. On the 1<sup>st</sup> issue I am guided by the locus classicus case on jurisdiction is the celebrated case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1 where Justice Nyarangi of the Court of Appeal held as follows'I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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.
21. In the case of *Republic v Karisa Chengo & 2 others* [2017] eKLR in which it upheld this Court's decision that a Judge of the specialized courts of Environment & Land (ELC) and Employment & Labour Relations (ELRC) have no jurisdiction to hear and determine matters reserved for the High Court and vice versa. After extensive analysis of the law, the appointment and swearing in of Judges, the apex Court held:

“It follows from the above analysis that, although the High Court and the specialized Courts are of the same status, as stated, they are different Courts. It also follows that



the Judges appointed to those Courts exercise varying jurisdictions, depending upon the particular Courts to which they were appointed. From a reading of the statutes regulating the specialized Courts, it is a logical inference, in our view, that their jurisdictions are limited to the matters provided for in those statutes. Such an inference is reinforced by and flows from Article 165(5) of the Constitution, which prohibits the High Court from exercising jurisdiction in respect of matters “reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or (b) falling within the jurisdiction of the Courts contemplated in Article 162(2)”.

22. The scope and jurisdiction of the Environment and Land court is set out in Section 13 of the Environment and Land Court Act, which states as follows:

“ 13

- (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 the 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 relating to environmental planning and protection, Climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; relating to compulsory acquisition of land; relating to land administration and management; relating to public, private, and community land and contracts, chooses in action or other instruments granting any enforceable interests in land; and any other dispute relating to environment and land.”

23. Turning back to the instant Appeal, and from a deep analysis of the pleadings, the impugned ruling dated 12<sup>th</sup> March 2019, the claim supporting documents, and the submissions of counsel, I am satisfied that this Appeal ought to be heard in the Environment & Land Court (ELC) which is properly vested with the Appellate jurisdiction, when it comes to all disputes around ownership of Land.

**The second issue for determination is whether or not this Court can grant the reliefs sought in the Appeal dated 14/3/2019.**

24. Having determined that this court lacks jurisdiction to determine the appeal; in the premise, the second issue does not arise and as it cannot be determined by this court. Any attempt to exercise appellate power would in the circumstances be illegal and unconstitutional.
25. For clarity, having determined that this court lacks jurisdiction, I have to down my pen as a result of which the second issue collapses by the wayside.

**Disposition:**

26. Section 13(1) of The Environment and Land Court Act, 2011 donates the exclusive jurisdiction to The Environment and Land Court to hear and determined appeals from the subordinate court when it comes to Environment and Land related suits.



27. I am satisfied that this Appeal ought to be heard in the Environment & Land (ELC) which is vested with the Appellate jurisdiction when it comes to Appeals from the subordinate courts when it comes to suits around ownership of Land.

**Orders:**

The appeal lacks merit and the same is dismissed with costs.

**DATED AND DELIVERED AT KIAMBU THIS 6<sup>TH</sup> DAY OF MARCH, 2023.**

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**J. CHIGITI (SC)**

**JUDGE**

