



REPUBLIC OF KENYA



**M’Mibuari v Chacha & 2 others (Environment and Land Appeal
42 of 2023) [2025] KEELC 4912 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4912 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 42 OF 2023**

JO MBOYA, J

JUNE 26, 2025

BETWEEN

TABITHA KALOKI M’MIBUARI APPELLANT

AND

ISAAC MIAKA CHACHA 1ST RESPONDENT

**THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER-
IGEMBE 2ND RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. The Appellant filed the Complaint dated 7th June 2019; and wherein the same sought various reliefs inter alia; a declaration that the creation of parcel number 4661/Upper Athiru Gaiti “C” Adjudication Section from the Appellant’s original parcel of land number 5161/Upper Athiru Gaiti “c” Adjudication Section, was fraudulent, illegal and void.
2. The first Respondent herein thereafter entered appearance and filed a statement of defence and counterclaim dated 25th November 2019; and wherein same [1st Respondent] denied the claims by the Appellant.
3. Furthermore, the 1st Respondent sought an order of permanent injunction to restrain the Appellant either by herself, agents, servants, or any other person acting on her behalf from interfering with parcel number 4661/Upper Athiru Gaiti “c” Adjudication Section.
4. The suit by the Appellant was heard by the learned trial magistrate whereupon both the appellant and 1st Respondent tendered evidence and produced various documents before the trial court. Subsequently, the trial court reserved the matter for delivery of Judgment.



5. It is instructive to note that the trial court ultimately delivered its Judgment on 22nd May 2023 and wherein the learned trial magistrate identified one solitary issue for determination. For good measure, the singular issue for determination was whether the honourable was seized of the requisite jurisdiction to entertain and adjudicate upon the dispute beforehand.
6. The learned trial magistrate after citing various decisions including the Speaker of the National Assembly vs Njenga Karume [1992] eKLR; Mutanga Tea and Coffee Company Limited vs Shikara Limited and Another [2015] EKLR; Robert Kuringa Nyamu vs Musembi Mutunga and Another [2022] EKLR and Tobias Achola Osindi & 13 others vs Cyprianos Otieno Ogalo & 6 others [2013] eKLR; proceeded to and held that same is divested of the requisite jurisdiction to entertain and adjudicate upon the dispute. To this end, the learned trial magistrate proceeded to and struck out the Appellant's suit as well as the counterclaim.
7. It is the said decision that has aggrieved the Appellant, culminating into the Memorandum of Appeal dated 15th June 2023; and wherein the Appellant has highlighted the following grounds;
 - i. The Learned magistrate erred in law and in fact failing to consider that the Objection No. 145 was in respect of Parcel 5161/Upper Athiru Gaiti "c" Adjudication Section and not the Defendant's Parcel No. 4661/Upper Athiru Gaiti "c" Adjudication Section.
 - ii. The Learned magistrate erred in law and in fact in holding that the Adjudication process was not complete, whereas the 1st Respondent who was the objector in Objection 145 did not appeal the said decision.
 - iii. The Learned magistrate erred in law and in fact in failing to consider that the decision of the Land Adjudication and Settlement Officer stated that Land Parcel No. 5161 was to be recorded in the names of the Appellant as demarcated.
 - iv. The Learned magistrate erred in law and in fact in holding that the honourable court lacked jurisdiction to hear and determine the suit herein whereas section 29 of the Land Adjudication Act did not apply to the dispute herein as the suit herein only sought to enforce the Decision of Objection No. 145.
 - v. The Learned magistrate erred in law and in fact in failing to appreciate that the Appellant was had proved her case on balance of probabilities that the Appellant was the owner of the entire land parcel No. 5161/Upper Athiru Gaiti "c" Adjudication Section hence the 1st Respondent was not entitled to any share of it.
 - vi. The Learned trial magistrate erred in law and in fact in failing to give due consideration to the evidence that the 1st Respondent had not purged the allegation and evidence of fraud produced by the Appellant.
 - vii. The Learned trial magistrate erred in law and in fact in failing to give due consideration to the fact that DW-1 did not ascertain how the 1st Respondent acquired the suit parcel of land No. 4661/Upper Athiru Gaiti "c" Adjudication Section and that his evidence was inconclusive and questionable as to the mutation of the Appellant's Parcel No. 5661.
 - viii. The Learned magistrate erred in law and in fact in failing to appreciate that the Appellant had proved her case on balance of probabilities in view of the weight of the Appellant's evidence and submissions in the trial court.
 - ix. The Judgment of the learned magistrate is bad in law.



8. The subject appeal came up for directions on 26th March 2025; and wherein the advocates for the parties confirmed that the record of appeal had been duly filed and served. Furthermore, the advocates for the parties covenanted that the appeal was ready for hearing. Additionally, it was agreed that the appeal shall be heard and disposed of by way of written submissions to be filed and exchanged by the parties.
9. Suffice it to state that the court adopted the agreement by the parties, namely, the agreement to canvass the appeal by way of written submissions. Moreover, the court ventured forward and circumscribed the timelines for filing and exchanging the written submissions.
10. The Appellant filed written submissions dated 22nd March 2025; and wherein the appellant has highlighted three [3] key issues, namely; whether the honourable court was seized of the requisite jurisdiction to entertain the suit or otherwise; whether the appellant proved and established the plea of fraud as against the respondents herein pertaining to the creation of parcel number 4661/Upper Athiru Gaiti “c” Adjudication Section; and whether the 1st Respondent had demonstrated his claim to the suit property or otherwise.
11. The 1st Respondent filed written submissions dated 10th April 2025; and wherein same has highlighted two [2] key issues, namely; that the appellant did not establish and or prove the plea of fraud to the requisite standard of proof; and that the 1st Respondent lawfully acquired the suit property and hence same [1st Respondent] is entitled to partake of the statutory privileges attendant to ownership of the suit property.
12. The 2nd and 3rd Respondents do not appear to have filed any written submissions. For good measure, no such submissions were obtainable from the court’s case tracking system [CTS].
13. Having reviewed the record of appeal, having taken into account the written submissions filed on behalf of the appellant and the 1st Respondent respectively; and having considered the applicable law [Section 30 of the *Land Adjudication Act*, Chapter 284 Laws of Kenya] I come to the conclusion that the determination of the subject appeal turns on one key issue, namely; whether the trial court was seized of the requisite jurisdiction to entertain and adjudicate upon the dispute that was mounted by the parties or otherwise.
14. Before venturing to analyse the thematic issue[s] highlighted in the preceding paragraph, it is imperative to observe that what is before me is a first appeal from the subordinate court.
15. Being a first appeal, this court is vested with the Jurisdiction to undertake exhaustive review, appraisal, re-evaluation and scrutiny of the entirety of the evidence tendered before the court and thereafter to form an independent conclusion arising out of the evidence on record.
16. Nevertheless, it is imperative to observe that even though this court has the jurisdiction to depart from the factual conclusions and finding of the trial court, such departure must only be undertaken when it is evident that the trial court either acted on a misapprehension of evidence on record; acted on no evidence; where the finding is perverse to the evidence on record, or where it is shown that there exist a demonstrable error of principle, which vitiates the finding of the trial court.
17. The Jurisdictional remit of the 1st Appellate court while dealing with an appeal has been elaborated in a plethora of decisions. Nevertheless, it is instructive to cite and reference the holding in the case



of Kenya Ports Authority vs. Kuston (Kenya) Limited [2009] 2 EA 212, where the Court of Appeal espoused the mandate or duty as follows:

“On a first appeal from the High Court, the Court of Appeal should 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 that respect. Secondly, that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.” See *Selle vs. Associated Motor Boat Company Ltd* [1968] EA 123 and also *Abok James Odera t/a A. J. Odera & Associates vs. John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR.”

18. Bearing in mind the ratio espoused in the decision [supra], it is now appropriate to revert to the subject matter and to calibrate on the issue[s] that underpin the dispute. It is imperative to observe that the appellant herein proceeded to and obtained a consent from the land adjudication department dated 30th May 2019, which consent allowed the appellant to file and mount the suit before the court.

19. Pertinently, the fact that the appellant had procured and obtained the consent from the land adjudication department was adverted to and highlighted at the foot of paragraph 15 of the Plaintiff. For ease of appreciation, it is appropriate to reproduce the said paragraph.

20. Same is reproduced as hereunder;

“This Court is clothed with the requisite jurisdiction to hear and determine this suit and the plaintiff has obtained the requisite consent under Section 30 of the [Land Adjudication Act](#), Chapter 284 Laws of Kenya.”

21. Additionally, it is important to recall that the Plaintiff tendered and reproduced before the court a copy of the consent letter dated 31st May 2019; wherein the Land Adjudication and Settlement Officer mandated the Appellant to file and lodge a suit challenging the propriety of Parcel Number 4661/ Upper Athiru Gaiti “c” Adjudication Section.

22. The legal implication of the consent dated 31st May 2019, [whose details have been highlighted in the preceding paragraph] is to the effect that the Land Adjudication Department divested itself of the jurisdiction.

23. On the contrary, the issuance of the consent effectively bestowed the court with the requisite jurisdiction to entertain and adjudicate upon the dispute pertaining to the subject matter. The Court became seized of the mandate to entertain and investigate the issue[s] raised vide the Suit.

24. Flowing from the foregoing, it is common ground that the moment the land adjudication and settlement department issued the consent then the court became seized of jurisdiction. To this end, I am afraid that the finding by the learned trial magistrate that same was [sic] divested of jurisdiction was premised on misapprehension of the provisions of Section 30(1) of the [Land Adjudication Act](#) Chapter 284 Laws of Kenya.

25. The Court of Appeal in the case of *Stanley Gitonga versus Gerald Mwithia* [2013] KECA429 [KLR], had occasioned to speak to the legal implications of a consent issued vide section 30 of the [Land Adjudication Act](#), Chapter 284; Laws of Kenya.

26. For coherence, the court stated as hereunder;

“We agree with the Judge that after the consent to file suit was given, that shifted the jurisdiction to court to determine the dispute. The trial magistrate had jurisdiction to



determine the suit and thus far we agree with the Judge, where we part company is the manner in which the evidence was analyzed leaving out pertinent matters and the fact that the defence evidence was not at all considered and this led to a wrong conclusion.”

27. From the holding of the Court of Appeal in the decision [supra], there is no gainsaying that the learned trial magistrate was seized of the requisite jurisdiction to entertain the suit filed by the Appellant. To this end, it was an error on the part of the learned trial magistrate to hold that same was divested of jurisdiction merely because the disputed plot was still under adjudication.
28. In view of the foregoing, I come to the conclusion that the Judgement of the learned trial magistrate and consequential decree is wrought with and replete of serious errors.
29. Same thus invites the intervention of this court.

Final Disposition:

30. Flowing from the discussion in the body of the Judgement, it must have become crystal clear that the learned trial magistrate misapprehended the import and tenor of section 30(1) of the [Land Adjudication Act](#), Chapter 284 Laws of Kenya. To this end, the appeal beforehand is meritorious.
31. I have agonized over the appropriate reliefs to give as pertains to the subject appeal. In particular, I have anxiously considered whether to order the matter to start de novo or to direct that the matter be remitted to the trial court to craft a Judgement on the basis of the evidence on record.
32. Be that as it may and taking into account the provisions of Sections 1A and 1B of the [Civil Procedure Act](#), it behoves the court to ensure that justice is rendered without undue delay. [See also Article 159 (2) (b) of [the Constitution](#)].
33. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder;
 - i. The Appeal be and is hereby allowed.
 - ii. The Judgement and the resultant decree of the learned trial magistrate be and is hereby set aside.
 - iii. The Judgment under reference be and is hereby substituted with an order reinstating and or restoring the suit for hearing and determination on merits.
 - iv. Furthermore, the suit be and is hereby returned to the trial court for purposes of crafting the judgement on the basis of the evidence that is on record and thereafter delivering a Judgement on merits.
 - v. In the event that the trial court has since been transferred from the station, the Judgement under reference shall be crafted by the successor of the trial court albeit on the basis of the evidence on record.
 - vi. The Deputy Registrar of this court shall facilitate the return of the original records to the trial court expeditiously to enable crafting of the Judgement.
 - vii. Additionally, the matter shall be mentioned before the trial court as soon as possible and in any event within 30 days of the date herein.
 - viii. Each party shall bear own costs of the Appeal.
 - ix. Nevertheless, the costs in the subordinate court shall abide the determination of the suit [subject to the delivery of the Judgement on merits].



34. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 26TH DAY OF JUNE 2025
OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].**

JUDGE

In the presence of:

Mutuma – Court Assistant

Ms. Asuma holding brief for Mr. Mutembei for the 1st Respondent

Ms. Miranda [Senior Litigation Counsel] for the 2nd and 3rd Respondents

No Appearance for the Appellant

