



**Miriti v Kaburo (Civil Appeal E148 of 2022)
[2025] KECA 1512 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KECA 1512 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL E148 OF 2022
W KARANJA, J MOHAMMED & LK KIMARU, JJA
SEPTEMBER 19, 2025**

BETWEEN

DOUGLAS MIRITI APPELLANT

AND

ELIZABETH KABURO RESPONDENT

(Being an appeal from judgement of the Environment and Land Court at Meru (C. K. Nzili J.) dated 28th September, 2022 in HC Constitutional Petition No. 10 of 2015)

JUDGMENT

Background

1. This is an appeal by Douglas Miriti (the appellant) against the judgment of the Environment and Land Court (ELC) delivered on 28th September 2022. The ELC found that the respondent's constitutional rights under Articles 20, 22, 23, 40 and 47 of *the Constitution* had been violated and issued orders cancelling the appellant's title to a portion of land measuring 0.97 acres.
2. The brief facts are that Elizabeth Kaburo (the respondent) filed an Adjudication Register (A/R) Objection against the appellant's father in respect of Parcel No. A 11351 Adjudication Section. The objection was heard and determined by the Land Adjudication Officer, who awarded 0.97 acres to the appellant. The respondent subsequently challenged the decision by way of a constitutional petition, contending that she had been condemned unheard and unlawfully deprived of her land.
3. The trial court allowed the petition, holding that the respondent's rights had been infringed, and declared the creation of the appellant's parcel null and void. Aggrieved, the appellant lodged the instant appeal.



Submissions by counsel

4. At the hearing of the appeal, learned counsel Mr. Anampiu appeared for the appellant while learned counsel, Mr. Kaume appeared for the respondent. Both counsel had filed written submissions which they both briefly highlighted. Mr. Anampiu submitted that the trial court erred in finding that the respondent's rights were violated. Counsel further submitted that the A/R objection that led to the subject objection proceedings was No 1443. That the objection was between the appellant and the respondent's father, M'Aburuki M'Itwamwari.
5. Counsel further submitted that the objection concerned land parcel No. 267 Ankamia Adjudication Section which had been illegally taken by the respondent's father who secretly transferred the suit land to the respondent during the pendency of the objection hearing. That the trial court granted prayers not sought and ordered for cancellation and nullification of the title to the appellant's parcel of land No. 12820. That the trial court failed to appreciate that the suit property did not feature in the Petition and the respondent did not seek for cancellation of title. Counsel emphasized that the decision of the ELC was against the law and urged us to allow the appeal.
6. Mr. Kaume opposed the appeal and submitted that the trial court did not err in finding that the respondent's constitutional rights were violated. That the subject land was parcel No. 11351 Ankamia Adjudication Section registered in the name of the respondent and that the respondent followed all the procedures in acquiring the suit property. That neither the respondent nor his father participated in the objection proceedings in respect of objection No. 1443 contrary to the rules of natural justice and in breach of her right to be heard. Counsel further submitted that the respondent was not a party to the objection proceedings and the appellant's argument that the respondent's recourse was to file an appeal to the Minister or Judicial Review case was not applicable to her. That the trial court's finding that the matter was properly before it was appropriate.
7. Counsel further submitted that the respondent was not party to the objection proceedings, that she was not condemned unheard and her land was illegally allocated to the appellants as a result of the said objection proceedings. That the alleged extraneous matters considered by the trial court were not pointed out by the appellant. That the trial court invalidated the creation of parcel No. 12820 from the respondent's parcel No. 11351 and thus the order for cancellation of title was appropriate to stop the appellant from illegally occupying the respondent's parcel of land and the trial court should not be faulted for issuing an order cancelling the appellant's title.

Determination

8. We have considered the record, the submissions by counsel, the authorities cited and the law.
9. As a first appellate court, this Court is duty bound to reconsider and re-evaluate the evidence on record, and to draw its own independent conclusions, bearing in mind that it neither saw nor heard the witnesses testify. See *Selle & Another v Associated Motor Boat Co. Ltd.* [1968] EA 123; *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR.
10. From the pleadings, the judgment of the trial court, and the submissions of counsel, the following issues arise for determination:
 - a) Whether the respondent's constitutional rights under Articles 40, 47 and 50 of *the Constitution* were violated;
 - b) Whether the respondent was bound to exhaust remedies available under the *Land Adjudication Act* prior to approaching the ELC;



- (c) Whether the ELC exceeded its jurisdiction in cancelling the appellant’s title; and
 - (d) Whether the judgment of the ELC was against the weight of evidence and the law.
11. On the first issue, the record shows that at the time of filing of the objection, the recorded owner of the land was the respondent’s father. It is undisputed that he participated fully in the proceedings, gave evidence, and cross-examined witnesses. The respondent obtained transfer during pendency of the objection. The trial court’s finding that she was condemned unheard was therefore erroneous.
 12. On exhaustion of remedies, Section 29(1) of the *Land Adjudication Act* provides that any person aggrieved by the determination of an objection by the Land Adjudication Officer may appeal to the Minister. The respondent fell within this ambit but failed to pursue this remedy. Jurisprudence is clear that litigants must exhaust statutory dispute resolution remedies save in exceptional circumstances, which were not demonstrated in this case.
 13. On jurisdiction, the trial court proceeded to cancel the appellant’s title.
Such cancellation was in substance a determination of interests in land, a mandate vested in the first instance exclusively in the Land Adjudication Officer and the Minister under the Act. We, therefore, find that the ELC exceeded its jurisdiction.
 14. On weight of evidence, the objection was properly filed against the recorded owner, who participated fully in the proceedings. The respondent’s petition was, therefore, without merit. The trial court disregarded evidence and granted reliefs not pleaded, warranting this appellate court’s interference.
 15. In view of the foregoing, this Court holds that:
 - (i) The respondent failed to prove violation of her constitutional rights;
 - (ii) She was required to exhaust statutory remedies under Section 29 of the *Land Adjudication Act*;
 - (iii) The ELC exceeded its jurisdiction when it purported to exercise jurisdiction that it did not have in the first instance; and
 - (iv) The impugned judgment was against the weight of evidence and the law.
 16. Accordingly, the appeal is merited and allowed. The judgment of the ELC dated 28th September 2022 is set aside in its entirety. The respondent’s petition before that court is hereby dismissed. The appellant shall have costs of this appeal and of the proceedings in the ELC.
 17. It is so ordered.

DATED AND DELIVERED AT NYERI THIS 19TH DAY OF SEPTEMBER, 2025.

W. KARANJA

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JUDGE OF APPEAL JAMILA MOHAMMED

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL



I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

