Wanjohi v Kamau & another (Civil Appeal 574 of 2019)
[2025] KECA 1474 (KLR) (12 September 2025) (Judgment)

Neutral citation: [2025] KECA 1474 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL 574 OF 2019

M NGUGI, F TUIYOTT & GV ODUNGA, JJA

SEPTEMBER 12, 2025

BETWEEN

CHARLES GITAHI WANJOHI ..... APPELLANT

AND

FRANCIS NJENGA KAMAU ..... 1ST RESPONDENT

CITY GOVERNMENT OF NAIROBI ..... 2ND RESPONDENT

(Being an appeal from the Judgment of the Environment and Land Court of Kenya at Nairobi (Bor, J.) delivered on 9th July 2019 in ELC Case No. 364 of 2019)

JUDGMENT

1. At stake in this appeal, as it was in the Environment and Land Court proceedings from which it arises, is the ownership of plot number 381 Umoja II Zone 8 Nairobi.

2. Indeed, this was the sole issue identified by the trial court (Bor, J.) as follows:

> " The issue for determination is who between the plaintiff and the 1st defendant has a superior claim to the Suit Property."

3. The trial court held in favour of Francis Njenga Kamau (the 1st respondent) in the judgment challenged in this appeal by Charles Gitahi Wanjohi (the appellant) under six grounds of appeal. In sum, the appellant's substantial complaint is that the judgment entered in favour of the 1st respondent was against the weight of evidence adduced at trial.

4. Having considered the written submission by the parties and the highlight of those submissions at plenary hearing made by learned senior counsel Mr. Kamau Karori assisted by learned counsel Mr. Stephen Gitonga for the appellant and learned counsel Mr. Muchangi Nduati for the 1st respondent

and read the record of appeal, we have reached the decision that the judgment of the trial court suffers a substantial shortcoming.

5. After identifying the issue for determination, the trial court gives an abridged version of the evidence led by parties with hardly any analysis of it and then somewhat abruptly concludes:

> " Weighing the evidence of the plaintiff against the evidence adduced by the defendants, the court is of the view that the plaintiff has a better claim to the suit land."

6. Order 21 of the Civil Procedure Rules on judgments and decrees requires that a judgment in a defended suit contains a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision (rule 4). In addition, reasons must be rendered for each issue framed (rule 5). Parties are not only interested in the determination of a matter but also the reasons for the outcome. Rendering of reasons for a decision is indeed a tenet of fair hearing.

7. Considering similar circumstances, this Court in Nduta Mbile v John Gachau Gitonga [2017] KECA 292 (KLR) stated;

> " We reproduced the impugned judgement and we need not belabour the point that the trial Judge did not give reasons, nor did he evaluate the evidence, and with tremendous respect, this is a fundamental error as parties are entitled to be given reasons.
>
> It is trite that every judgement in a defended suit should contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such of the decisions. Even though this was a labour dispute, it is imperative while exercising judicial authority reasons for a judgement must be given as parties need to know why the Judge or judicial officer arrived at a particular decision. Of course giving reasons demonstrates the court's articulation of the factual and legal basis for the decision as well as the interpretation of the relevant law or rules being applied by the Judge."

8. We are unable to find any meaningful analysis of the law and evidence made by the learned trial judge that led to the conclusion that the plaintiff (here the 1st respondent) has a better claim to the suit land, and we are afraid we must set aside the judgment for that singular reason.

9. We have agonised on what to do in the circumstances. We could analyse the evidence and decide the dispute under our remit as a court hearing a first appeal. Yet, parties should benefit from subjecting their dispute first to the decision of a trial court which hears and sees witnesses testify before seeking a second opinion of the matter in an appeal. A more enriched and just outcome may be reached if parties exhaust the two-tier process. Save for exceptional circumstances like where a party is unable to mount a rehearing, the process should not be short circuited.

10. For the reason given, we allow the appeal. The judgment of 9th July 2019 is hereby set aside. This matter is remitted for trial on priority basis before a judge of the Environment and Land Court other than Bor, J. For purposes of an expedited hearing, this matter and our judgment shall be placed before the Presiding Judge of that court within 14 days hereof for directions. Each party to bear his own costs here and at trial.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF SEPTEMBER 2025.

MUMBI NGUGI

.....

JUDGE OF APPEAL

F. TUIYOTT

.....

JUDGE OF APPEAL

F. V. ODUNGA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.