



**Murabula (Suing as the Personal Representative of the Estate Agnes Matendechere
Ubulamire and on his own behalf) v Mabwabo & 3 others (Succession Appeal
E013 of 2025) [2025] KEHC 13712 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13712 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION APPEAL E013 OF 2025
S MBUNGI, J
OCTOBER 3, 2025**

BETWEEN

**FRANCIS WETUKHA MURABULA (SUING AS THE PERSONAL
REPRESENTATIVE OF THE ESTATE AGNES MATENDECHERE UBULAMIRE
AND ON HIS OWN BEHALF) APPELLANT**

AND

**DANCAN KIZITO MABWABO 1ST RESPONDENT
CHIEF LAND REGISTRAR, KAKAMEGA 2ND RESPONDENT
CHIEF, IMANGA LOCATION 3RD RESPONDENT
ASSISTANT CHIEF, BULANDA SUB – LOCATION 4TH RESPONDENT**

RULING

1. The Applicant vide a Notice of Motion dated 04/09/2025 seeks for the following orders:-
 - a. Spent...
 - b. That pending the hearing and determination of this application, there be a stay of the taxation proceedings of the 1st Respondents bill of costs dated 25/04/2025 in MCELC/28/2023 *Francis Wetukha Murabula v Dancan Kizito Mabwabo And 3 Others*.
 - c. That pending the hearing and determination of this application, there be a stay of proceedings in MCELC/28/2023 *Francis Wetukha Murabula v Dancan Kizito Mabwabo And 3 Others*.
 - d. That pending the hearing and determination of the appeal, there be a stay of the taxation proceedings of the 1st Respondents bill of costs dated 25/04/2025 in MCELC/28/2023 *Francis Wetukha Murabula v Dancan Kizito Mabwabo And 3 Others*.



- e. That pending the hearing and determination of the appeal, there be a stay of proceedings in MCELC/28/2023 *Francis Wetukha Murabula v Dancan Kizito Mabwabo And 3 Others*.
 - f. Any other orders that the court may deem fit.
 - g. That costs of this application be provided.
2. The application is based on the grounds on the dace of it and on the supporting Affidavit of *Francis Wetukha Murabula*.
 3. On the 18/09/2025 when the matter cane before the court, the court directed parties to file written submissions on whether this Honourable Court has the jurisdiction to hear, admit and entertain this suit.
 4. The parties have filed submissions , I have looked at them.

Determination

5. I have looked at the copy of handwritten judgment Appealed against.
Butere Mcelc/28/2023 Francis Wetukha Murabula v Dancan Kizito Mabwabo And 3 Others .
6. In paragraph 1, it states :-

“The Plaintiff commenced these proceedings against the Defendants through his plaint dated 03/09/2021 in which he sought for the following reliefs namely;

 - a. A declaration that the Defendants have infringed on the Plaintiffs right to property.
 - b. An order compelling the 2nd Defendant to revoke/cancel the title deed to the suit property issued on the 04/09/1986.
 - c. An order compelling the 2nd Defendant to issue fresh title deed to the suit property in the name of the Plaintiff.
 - d. An eviction order against the 1st Defendant.
 - e. A permanent injunction against the Defendants by themselves, their agents, servants, successors, assigns howsoever from intermeddling, selling, entering, encroaching, trespassing, working, constructing, alienating, transacting on and evicting the Plaintiff from the suit property Marama/ Shinamwenyuli/1127.
 - f. Costs of the suit and interest.”
7. I have also looked at the Memorandum of Appeal dated 14/04/2025, the Appellant seeks the following reliefs and or orders from this Honourable Court: -

The judgement of Hon. E. Wasike delivered on the 18/03/2025 be set aside entirely and

 - a. The Respondents Defence dated 20/07/2022 and 09/02/2022 respectively be dismissed.
 - b. In its place, this Honourable court allow the prayers in the Plaint dated 03/09/2021 as prayed.
 - c. The Appellant be granted costs of this Appeal and the costs in the trial court.



Dated at Nairobi this 14/04/2025.”

8. It is a well settled principle of law that a court of law can only exercise jurisdiction as conferred by the Constitution or other written law.

9. Article 165 (5) Of the Constitution provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162 (2)

Article 162 (2) (b) of the Constitution provides.

“ 162 (2) (b) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a) ..

(b) the environment and the use and occupation of, and title to, land.”

10. Section 13 of the Environment and Land Court Act provides

“

“ 13. Jurisdiction of the Court

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.

1. 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.

2. Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.

3. In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

7. In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including?

a. interim or permanent preservation orders including injunctions;



- b. prerogative orders;
- c. award of damages;
- d. compensation;
- e. specific performance;
- g. restitution;
- h. declaration; or
- i. costs.”

11. A perusal of the judgement of the lower court and the Memorandum of Appeal and in light of the provisions of Article 165 (5) (b) of the Constitution, Article 162 (2) (b), of the Constitution and Section 13 of the Environment and Land Court Act it is clear that a claim for use and occupation of, and title to, land falls within the exclusive jurisdiction of the Environment and Land Court. Therefore this Court lacks jurisdiction to hear, admit and entertain this Application and also the Appeal.
12. The Application and the Appeal is hereby struck off for want of jurisdiction.
13. No Orders as to costs for the Application and the Appeal had not been Argued.

DATED SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 3RD DAY OF OCTOBER, 2025.

S.N. MBUNGI

JUDGE

In The Presence of;

CA: Angong’a

Ms Awuor for the Appellant present online.

Mr. Juma for the 2nd, 3rd and 4th Respondent present online.

