



Njiru (On Behalf of Ngui Clan) v Kironjo (on Behalf of Mugwe Clan) & 66 others (Environment and Land Appeal E013 of 2023) [2025] KEELC 7733 (KLR) (15 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7733 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E013 OF 2023
AK BOR, J
OCTOBER 15, 2025**

BETWEEN

ZAVERIO NGARI NJIRU (ON BEHALF OF NGUI CLAN) APPELLANT

AND

BENSON NGUGI KIRONJO (ON BEHALF OF MUGWE CLAN) 1ST RESPONDENT

PETER MATHURI KARANI & 65 OTHERS & 65 OTHERS . 2ND RESPONDENT

JUDGMENT

1. This appeal was brought against the ruling of Hon W. Ngumi, Principal Magistrate delivered on 3 9 2020 in Embu ELC Case No. 219 of 2014 (formerly Siakago PMCC No. 3 of 2006), vide which the Learned Magistrate declined to grant the orders sought by the Appellant in the application dated 18 4 2019 on grounds that that court lacked jurisdiction. In that application, the Appellant sought, inter alia, an order for the restoration of Blocks 131 and 136 within Gichiche Adjudication Section to the status they were in as at 26 10 2006 as being owned by the Ngui Clan. They also sought cancellation of the titles obtained pursuant to the court order dated 26 10 2006 and an order of inhibition to be registered against the resultant titles and general damages for trespass and acts of waste committed by the Respondents with respect to those two blocks.
2. The Appellants filed the application dated 18 4 2019 under Section 91 of the *akn ke act 1924 3 Civil Procedure Act* seeking restitution of land whose ownership had been altered pursuant to a decree issued by the Magistrate's Court on 26 10 2006, which decree was subsequently vacated by the High Court in Embu Civil Appeal No. 62 of 2009 on 18 12 2012 for want of jurisdiction of the magistrate's court. In vacating that order, Lady Justice H.I. Ong'udi transferred the suit to the Kerugoya Environment and Land Court (ELC) for hearing and disposal. The suit was later transferred to Embu ELC for disposal.



3. The application dated 18 4 2019 was filed before this court and in the ruling delivered on 6 2 2020, Hon. Justice Angima made a finding that the proper court to hear and dispose of the application for restitution was the Magistrate's Court at Siakago, being the court of first instance within the meaning of Section 91(1) of the *akn ke act 1924 3 Civil Procedure Act* and accordingly directed the court to hear and determine the application.
4. When the application came up for determination before the Siakago Magistrate's Court, the Learned Magistrate determined that she lacked tpecuniary jurisdiction to determine the application based on Lady Justice Ongund'i's findings in Embu Civil Appeal No. 62 of 2009. Consequently, the Learned Magistrate downed her tools and referred the matter back to this court for further directions.
5. In this appeal, the Appellants challenge the Learned Magistrate's ruling on the following grounds set out in their memorandum of appeal:
 - a. The Learned Magistrate erred in overruling the learned Judge in respect of the High Court ruling or order dated 20 2 2020 directing that court to hear and determine the application dated 18 4 2019;
 - b. The Learned Magistrate erred in law in finding that the Magistrates Court did not have jurisdiction to hear and determine the notice of motion dated 18 4 2019 as ordered by the High Court.;
 - c. The ruling or order made by the Learned Magistrate is a legal aberration and ought to be corrected as a matter of principle.
6. The Appellants sought to have the ruling or order made by the Learned Magistrate's on 3 9 2020 reviewed or set aside and for the application dated 18 4 2019 to be heard by a different court. They also sought the costs of the appeal.
7. The appeal was canvassed through written submissions. The Appellants submitted that the Learned Magistrate acted suo moto without notice to the parties advocates and declined to hear and determine the application dated 18 4 2019 on merit as directed by this court upon holding that this court had wrongly directed the subject proceedings to it for disposal. They invited the court to consider that the Learned Magistrate had no legal or administrative jurisdiction to revisit the issue of section 91 of the *akn ke act 1924 3 Civil Procedure Act* which was dealt with by this court in its ruling dated 6 2 2019, particularly in paragraphs 8 and 11, on the basis that that amounted to overruling this court. They averred that this court had already clarified in its ruling dated 6 2 2019 the special jurisdiction of the court of first instance under section 91 of the *akn ke act 1924 3 Civil Procedure Act* as being different from the trial jurisdiction of a court. They urged that the appeal was well founded and should be allowed.
8. The Respondents submitted that the substantive suit commenced at Siakago that was transferred to the Embu ELC Court was struck out following the orders made by consent of the parties in Nyeri Civil Appeal No. 65 of 2019 and therefore, there was no suit before the trial court upon which the application dated 18 4 2019 could stand. They contended that if the Appellants had any claim over the suit land, their only recourse was to file a different suit but not ride on a dismissed suit. They averred that having been struck out, the suit become non-existent and the court lacked jurisdiction to entertain any applications arising from it unless the suit were reinstated. They further contended that the orders sought in the application are not capable of being granted through an application without a substantive suit.



9. The Appellants filed further submissions in response to the Respondent submissions, and submitted that this court agreed with the Appellants that the court of first instance for the purposes of the reversed decree dated 26 10 2006 was the Principal Magistrates Court at Siakago. They contended that that ruling was never challenged meaning that this court could not sit on appeal over that ruling. They submitted that their application for restitution was based on the decree dated 18 12 2012 issued in Embu HCCA No. 62 of 2009 which reversed the magistrate court's order dated 26 10 2006 and not the decree issued on 7 2 2019 which was reversed by the Court of Appeal in Nyeri Civil Appeal No. 65 of 2019 vide the decree dated 27 6 2023.
10. They submitted that an application under section 91 for restitution is not founded on a suit but on the varied or reversed order or decree and therefore the Respondent's argument that the application has to be anchored on a suit was baseless. They averred that the decree in the Nyeri Civil appeal No. 65 of 2019 did not have any nexus to the pending application. They urged that the Learned Magistrate erred in overruling this court's ruling and making a counter-ruling without inviting views from the parties' advocates.
11. The issue for determination is whether the Learned Magistrate erred by declining to hear and determine the Appellants' application dated 18 4 2019 and instead referred the matter back to this court for directions on grounds of lack of jurisdiction.
12. Angima J. in the ruling delivered on 6 2 2020 held that the court of first instance within the meaning of Section 91(1) of the *akn ke act 1924 3 Civil Procedure Act* to hear and determine the application was the Principal Magistrate's Court at Siakago. In paragraph 11 of the said ruling, the Judge observed as follows:

“The court does not agree with the Plaintiffs' submissions that the doctrine of *functus officio* is applicable to an application for restitution. The Defendant has filed the application because the order of the Magistrates' Court dated 26th October 2006 was set aside or reversed by the High Court on appeal. In those circumstances, the court will not be trying or determining afresh matters which have already been decided in a previous suit but simply entertaining an application for restitution within the meaning and intendment of Section 91 of the *akn ke act 1924 3 Civil Procedure Act*. If the Plaintiff's contention is that no issue of restitution has arisen in this matter, then that would still be a matter for consideration by the court of first instance....The upshot of the foregoing is that the court is satisfied that the instant application for restitution ought to be heard by the court of first instance which passed the order of 26th October 2006 which was subsequently set aside by the High Court.”
13. It is therefore clear from the above that this court had already determined, conclusively, that the Principal Magistrate's Court at Siakago was seized of the requisite jurisdiction to entertain and determine the Appellants' application for restitution. The Principal Magistrate's Court at Siakago is the proper forum to hear and determine the application for restitution dated 18 4 2019 since that court made the order or decree which the High Court reversed. The Learned Magistrate erred by declining to determine the application for restitution of the suit land to the position it was in before the decree issued by that court on 26 10 2006 and in referring the matter back to this court without hearing the parties.
14. To put the facts of this dispute in perspective, it is important to give the background to this case as can be gleaned from the record of appeal and submissions of the parties. The Respondents filed Siakago PMCCC No. 3 of 2006 seeking orders that block numbers 131, 136 and 148 in Gichiche Adjudication Section belonged to the Respondent and for the Kenya Power and Lighting Company to be directed



not to release any money to the Respondent until the hearing and determination of the true owners of those blocks.

15. The Learned Magistrate, Hon F. M Omenta made orders on 26 10 2006 to the effect that Siakago PMCCC No. 3 of 2006 only involved block 148 and that the Appellants did not have any claim of ownership of blocks 131 and 136 having given them up as they belonged to the Appellant. Aggrieved by that decision, the Appellant lodged Embu HCCA No. 62 of 2009 against the decision of the Hon F. M Omenta. Vide the judgment of Lady Justice H. I. Ong'udi, the orders dated 26 10 2006 were vacated on 18 12 2012 and Siakago CMCCC No. 206 of 2007 was transferred to Kerugoya ELC for hearing and determination. Later the file was transferred from Kerugoya ELC to Embu ELC. The case was assigned Embu ELC Case No. 219 of 2014.
16. From the submissions of parties and the ruling of Angima J, it is apparent that Embu ELC Case No. 219 of 2014 only dealt with block 148 in Gichiche Adjudication Section after the Respondents were granted leave to amend their plaint and they abandoned their claim over blocks 131 and 136 in Gichiche Adjudication Section. The effect of the amendments to the suit was that the Respondents had abandoned their claims to blocks 131 and 136 in Gichiche Adjudication Section altogether. Ideally, that land ought to have reverted to the Appellants after the Respondents abandoned their claim to the two blocks.
17. It would seem that the Appellants did not take any steps to have the orders issued by the High Court which reversed the orders of Hon F. M Omenta made on 26 10 2006 implemented by the Magistrates Court following which at the instigation of the Respondents, blocks 131 and 136 in Gichiche Adjudication Section were subdivided and registered in the names of the 67 persons listed on page 2 and 3 of the application dated 18 4 2019. The Appellants' claim is that the Respondents went ahead and fraudulently enforced the orders issued by the Learned Magistrate on 26 10 2006 and in 2015 titles were issued to the 67 persons named as the second set of Respondents in this appeal.
18. Looking at the sequence of events, it is apparent that the application for restitution under Section 91 was not made timeously by the Appellants and the Respondents took advantage of the inaction and titles were somehow processed and issued over the land that comprised blocks 131 and 136 in Gichiche Adjudication Section to persons who were not clan members of the Appellant despite the fact that the orders made by the Learned Magistrate on 26 10 2006 had been reversed and set aside on 18 12 2012.
19. The first prayer in the application dated 18 4 2019 is for an inhibition order to be registered against the parcels of land appearing in the schedule. Looking at Section 91 of the *Kenya Civil Procedure Act* under which the application is made, the orders the court of first instance is mandated to make are restitution that will so far as possible place the Appellant in the position it would have occupied were it not for the orders made by the Learned Magistrate on 26 10 2006, orders for the refund of costs, payment of interest, damages, compensation and mesne profits which are properly consequential on the reversal of the orders made on 26 10 2006.
20. Orders of inhibition would not fall within the ambit of the orders specified in Section 91. This court is of the view that the Magistrate's court lacks jurisdiction to grant the orders for inhibition as sought through prayer no. 2 of the Appellant's application dated 18 4 2019.
21. The application for restitution dated 18 4 2019 was filed in ELC Case No. 219 of 2014 and orders transferring the ELC file to the Magistrate's court at Siakago were made on 6 2 2020. This court's reading and understanding of Section 91 of the *Kenya Civil Procedure Act* is that the application should have been sought in the file relating to Siakago PMCCC No. 3 of 2006 without necessarily going through the ELC for the judge to make an order directing the Learned Magistrate, as the court of first instance, to deal with the application for restitution under Section 91 of the *Kenya Civil Procedure Act*.



ke act 1924 3 Civil Procedure Act. What needed to be done was to have an application made for the court record in respect of Siakago PMCCC No. 3 of 2006 to be transferred to the Siakago Magistrates' Court for that court to dispose of the application for restitution.

22. The appeal succeeds in part. The ruling of Hon. W. Ngumi, Principal Magistrate delivered on 3 9 2020 is set aside, and Siakago PMCCC No. 3 of 2006 is remitted to the Principal Magistrate's Court at Siakago for hearing and determination of the application dated 18 4 2019 seeking restitution under Section 91 of the *akn ke act 1924 3 Civil Procedure Act.*
23. The Appellants are awarded the costs of the appeal.

DELIVERED VIRTUALLY AT EMBU THIS 15TH DAY OF OCTOBER 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Njage Wanjeru for the Appellants

Diana Kemboi- Court Assistant

No appearance for the Respondents

