



**Papu v Waweru & another (Environment and Land Case
263 of 2017) [2025] KEELC 7475 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7475 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 263 OF 2017
MD MWANGI, J
OCTOBER 30, 2025**

BETWEEN

KEREBU KASARO PAPU PLAINTIFF

AND

RICHARD NGATIA WAWERU 1ST DEFENDANT

PATRICK GUKURA MURAYA 2ND DEFENDANT

RULING

1. This is a suit that was filed way back in the year 2012 at the Machakos High Court. It was transferred to this court in the year 2017. In the plaint dated 2nd March 2012, the Plaintiff pleaded that he was the sole registered proprietor of the undivided parcel of land known as Kjd/Kaputiei-North/1261 measuring 100 acres until the entry of the 1st and 2nd Defendants as proprietors of divided portions out of said property being L.R. No. Kjd/Kaputiei-North/14672 and 14673, respectively.
2. The Plaintiff admits that he had covenanted with the 2nd Defendant herein by way of an agreement dated 8th July 2003 to sell him 50 acres that was to be hived out of the 100 acres at the price of Kshs. 30,000/- per acre. The total purchase price therefore was Kshs. 1,500,000/- which was to be paid by instalments as stipulated in the agreement until payment in full. The Plaintiff alleged that he handed over the title deed Kajiado/Kaputiei-North/1261 to the 2nd Defendant for purposes of subdivision and excision of the 50 acres the subject of their sale agreement on the understanding that the 2nd Defendant would return the title for the remaining 50 acres in the name of the Plaintiff.
3. It is the Plaintiff's case that the subdivision was indeed undertaken and the 2nd Defendant had the 50-acres portion registered in his name but he failed to return to the Plaintiff, the resultant title for the remainder of 50 acres. The Plaintiff alleges that he later learnt that the resultant title of 50 acres that was supposed to have been registered in his name was instead registered in the name of the 1st Defendant.



4. The Plaintiff further claimed that the 2nd Defendant did not honour the terms of the agreement as regards the payment of the instalments towards the purchase price even after the Plaintiff extended the period for payment of the instalments. When the 2nd Defendant resisted payment completely, the Plaintiff in the year 2011 repudiated the agreement of sale by a letter dated 8th January 2012. The Plaintiff avers that at the time of repudiation of the contract, the 2nd Defendant had only paid a sum of Kshs. 487,500/- which amount the Plaintiff was ready and willing to refund the 2nd Defendant. The Plaintiff therefore claims against the 2nd Defendant the property known as Kjd/Kaputiei-North/14673, measuring 50 acres. He expressed his willingness to make rebate for the sum of Kshs. 487,500/- paid by the 2nd Defendant.
5. As against the 1st Defendant, the Plaintiff claimed that he had never transacted, sold or in any other way disposed the property known as Kjd/Kaputiei-North/14672. Any purported instruments of disposition showing either sale, transfer or any dealing of the property between him and the 1st Defendant is forgery and not his deed. He therefore claimed against the 1st Defendant the suit property Kjd/Kaputiei-North/14672 measuring 50 acres.
6. The Plaintiff reiterated that the purported transfer and registration to the 1st Defendant is either a forgery or a mistaken transfer. He prays for rectification of the title Kjd/Kaputiei-North/14672.

Responses by the Defendants

7. The 1st Defendant filed a statement of defence dated 14th June 2012 denying the Plaintiff's claim in its entirety and putting him to strict proof. He asserted that he was the registered proprietor of the parcel of land known as Kjd/Kaputiei-North/14672, which he had acquired by way of purchase for valuable consideration from one Peter Njenga Githuku who was at the material time the registered proprietor thereof.
8. The 1st Defendant further denied the Plaintiff's allegations that he has been in possession of the suit property stating that he was the one who has been in occupation thereon from the time of purchase. He reiterated that his registration as proprietor of the suit property was procured by way of a bona fide purchase for valuable consideration from one Peter Njenga Githuku, the then registered proprietor of the property. He therefore prayed for the dismissal of the Plaintiff's suit against him.
9. The 2nd Defendant on his part filed a statement of defence dated 13th June 2012 also denying the Plaintiff's claim in its entirety and putting him to strict proof thereof. He pleaded that the Plaintiff's claim was time barred under the statute of limitations and further that it raised no triable issues against him and was just but an abuse of the process of court.
10. The 2nd Defendant admitted that he purchased the parcel of land Kjd/Kaputiei-North/14673 from the Plaintiff through a sale agreement dated 8th July 2003; it was hived off Kjd/Kaputiei-North/1261. He affirmed that he took possession of the property after the purchase and he had gone ahead to charge it as a security to secure a financial facility with Equity Bank Limited.
11. The 2nd Defendant asserts that he performed his part of the sale agreement dated 8th July 2003 by fully complying with its terms particularly on payment of the entire purchase price of Kshs. 1,500,000/- to the Plaintiff whereafter the Plaintiff delivered the title Kjd/Kaputiei-North/14673, upon receipt of the entire purchase price.
12. It was the 2nd Defendant's contention that there was no way the Plaintiff could repudiate a contract that had been performed and completed by both parties. The 2nd Defendant therefore prayed for the dismissal of the Plaintiff's suit with costs.



Determination

13. I stated that this case was initially filed in the High Court at Machakos being Machakos High Court Land Case No. 62 of 2012. On 4th February 2015, the hearing partly proceeded before Mr. Justice Charles Kariuki, a Judge of the High Court at Machakos despite the fact that the Environment and Land Court had already been established by the *Environment and Land Court Act*, No. 19 of 2011. The hearing of the case before the High Court Judge was contrary to the requirements of Rule 5 of the Practice Directions on Proceedings in the Environment and Land Courts, and on proceedings relating to the Environment and the Use and Occupation of, and Title to land and proceedings in other courts, gazetted by the Hon. Chief Justice vide Gazette Notice No. 5178.
14. Rule 5 was explicit that;

‘All cases relating to the environment and use of and title to land which have hitherto been filed at the High Court and where hearing in relation thereto are yet to commence shall be transferred to the Environment and Land Court as directed by the Judge.’
15. The High Court Judge did not, at the time he took the Plaintiff’s evidence, have the jurisdiction to handle matters that were under the scope of the jurisdiction of the Environment and Land Court. I do not think this is an issue that calls for any further elaboration.
16. When the matter was eventually transferred to this court, Lady Justice Christine Ochieng, on 20th September 2017 rightly ordered that the matter starts afresh noting that Mr. Justice Charles Kariuki had not been gazetted as an Environment and Land Court Judge at the time when he conducted the proceedings of 4th February 2015. The case was thereafter set down for hearing on several occasions but it did not take off before Lady Justice Christine Ochieng.
17. On 2nd November 2021, the case was actually dismissed with costs to the Defendants for non-attendance by the Plaintiff.
18. The Plaintiff filed an application dated 10th December 2021 to reinstate the suit, which was successful. The suit was reinstated. The court, in its ruling of 29th May 2023, warned the parties that in future, no adjournment would be entertained on the grounds of absence of the parties or their counsel.
19. Some intriguing things happened in this matter thereafter; after the reinstatement of the suit. Those happenings are what have prompted this court to write a ruling rather than a judgement for the reasons to be explained hereinafter.
20. On 28th September 2023, the Judge then seized of this matter made the following orders –
 - i. Nelson Odupoi Kelapa appointed as legal representative of the deceased Plaintiff.
 - ii. By consent, the case to proceed from where it reached.
 - iii. Hearing on 4/3/2024.
21. On 17th November 2023, an amended plaint purportedly amended on 6th October 2023 was sneaked into the court file. There is no evidence of payment of court fees on the amended plaint. It is also not filed on the Case Tracking System (CTS). I have carefully perused the record of the court. I see no evidence of leave granted to the Plaintiff to amend the plaint in spite of the fact that pleadings had long closed even before the file was transferred from the High Court at Machakos. The amended plaint purported to switch the name of Kerebu Papu Kasaro as the Plaintiff with the name of Nelson Odupoi.



22. From the foregoing I can tell that the Plaintiff, Kerebu Papu Kasaro is dead. What I cannot tell is when he died. The purported amended plaint dated 6th October, 2023 was an attempt by the law firm of Rabala and Company Advocates to substitute the deceased Plaintiff with one Nelson Odupoi. This means that the advocate for the Plaintiff knew as early as 6th October 2023 that his client was dead. Even assuming that the Plaintiff died on 6th October 2023, this suit abated after the expiry of one year by operation of the law in accordance with the provisions of Order 24 rule 3(2) of the Civil Procedure Rules. The suit ceased to exist.
23. The court has all through been engaged in a circus unfortunately; chasing the wind and wasting precious judicial time. The suit having abated, there is no suit for me to render any judgment on. It is that simple.
24. However, I need too to comment on that order purporting to appoint one Nelson Odupoi Kelapa as the legal representative of the deceased Plaintiff. An administrator under the Law of Succession Act means a person to whom a grant of letters of administration has been made. The Environment and Land Court has no jurisdiction to issue a grant or appoint a legal administrator of a deceased person. That is the exclusive jurisdiction of the High Court, or the Magistrates' Court (where applicable) under the law of Succession Act.
25. This court has no jurisdiction to confer the title of a legal administrator on any person. I will be forthright and state that the deceased Plaintiff has not been lawfully substituted. The purported plaint introducing the supposed administrator was not filed in court. It is an alien document of no legal consequence.
26. Finally, there is a purported consent varying the orders of Lady Justice Christine Ochieng that had directed that the case was to start de novo on the basis that the proceedings before Mr. Justice Charles Kariuki were a nullity since he was not gazetted as an Environment and Land Court Judge. The purported consent was an attempt to regularise a nullity; to confer jurisdiction on a court that had no jurisdiction.
27. It is trite that jurisdiction is conferred either by the Constitution or Statute or both. It cannot be conferred by the consent of parties, and any waiver on their part cannot make up for a lack or defect of jurisdiction.
28. The pronouncement by Lord Denning in the case of Macfoy -vs- United Africa Company Limited (1961) 3 ALLER 1169, is appropriate in this case. He stated that,

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it, is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse”.
29. That said, I declare that the Plaintiff's suit is abated and I hereby order that this file be closed. I make no orders as to costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 30TH DAY OF OCTOBER 2025.

M.D. MWANGI



JUDGE

In the virtual presence of:

Mrs. Njagi h/b for Mr. Rabala for the Plaintiff

Mr. Ndurumo for the 2nd Defendant

N/A by the 1st Defendant

Court Assistant: Mpoye

