

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT THIKA**  
**CIVIL DIVISION**  
**CIVIL APPEAL NO. 255 OF 2023**

**FORMERLY KIAMBU CIVIL APPEAL NO. E240 OF 2021**

**KABINGA NGURE** ..... **APPELLANT**

**VERSUS**

**GIKURUMI WAWERU** ..... **1<sup>ST</sup> RESPONDENT**  
**NYOIKE MBUCHO** ..... **2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from Judgement and Decree of Hon. B.M. Ekhubi,  
Principal Magistrate, delivered at Thika Law Courts on 25 March  
2021 in Civil Suit No. 191 of 1993)*

**JUDGEMENT**

1. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed suits in 1993 and 1995, respectively, against the Appellant seeking:
  - (i) A declaration that the Defendant is unlawfully occupying a portion of the Plaintiffs' land
  - (ii) That the Defendant be evicted from the suit land;
  - (iii) That the Defendant be permanently restrained from interfering or dealing with the said land;

- (iv) That the Defendant do pay the Plaintiffs mesne profits to be assessed by the Court;
  - (v) General damages
  - (vi) Costs of the suit
2. The two suits were consolidated. The matter proceeded to hearing, where the Respondents called 4 witnesses. The Appellant did not call any witness.
3. In its judgement, the trial court found in favour of the Respondents and awarded Ksh 200,000/- as general damages for trespass. Further, the court directed the Appellant to vacate the property within 45 days thereof.
4. Aggrieved by the judgement, the Appellant lodged this appeal on the following grounds:
  - (i) That the learned trial Magistrate erred in law and in fact in failing to appreciate that the Applicant herein had not sold his property to the Respondents;
  - (ii) That the learned trial Magistrate erred in law and in fact in failing to appreciate that there was a fraudulent transfer of the Appellant's title into the names of the Respondents herein;
  - (iii) That the learned trial Magistrate erred in law and in fact in failing to appreciate that the Respondents herein did not provide any agreement for the sale or proof of any consideration paid;
  - (iv) That the learned trial Magistrate erred in law and fact in failing to appreciate that the Appellant has always resided on the suit property which he has developed and raised his family in;
  - (v) That the learned trial Magistrate erred in law and fact in failing to appreciate that the Respondents herein intend to divest the Appellant's right to property as enshrined in the Constitution.
5. The appeal was canvassed by way of written submissions.

6. The Appellant submits that the Respondents claimed to have purchased the suit property in 1972 but failed to produce any sale agreement, proof of payment, or evidence of ever having acquired actual possession of the property. A significant portion of the Appellant's submissions focuses on the alleged deficiencies in the trial process, particularly concerning the testimony of the District Land Registrar. The Appellant contends that the Land Registrar, while in possession of the original register for the suit property, failed to produce it. Further, that the Land Registrar was stood down for failing to produce certified copies of the subdivision of the suit property and was, consequently, never cross examined by the Appellant. The Appellant contends that there was no evidence produced regarding the manner in which a caution lodged by the Appellant's wife was removed, nor was there any evidence of spousal consent for the alleged sale.
7. Most gravely, the Appellant makes a profound procedural allegation: that he was not given an opportunity to be heard despite it being on record that the Respondents never closed their case. The Appellant submits that the title documents held by the Respondents are fraudulently acquired and that the trial court failed to consider these crucial omissions and illegalities.
8. The 1<sup>st</sup> Respondent refutes the Appellant's claims. His case is that the transfer of the suit property was the result of a lawful sale transaction that occurred in 1972, with the title deed being issued in 1983 under the provisions of the Registered Land Act (now repealed).
9. The 1<sup>st</sup> Respondent maintains that the Registrar's testimony, as captured in the court proceedings, confirmed the legality of the transfer. He submits that the Registrar produced originals and certified copies of transfer, consent and application forms from Waweru, Nyoike and Kabinga, respectively, who are the buyers and seller. It is the 1<sup>st</sup> Respondent's position that the Registrar would have not issued titles had the Appellant not signed the requisite

transfer forms, and the Appellant had not adduced no material evidence to question the authenticity of his signature on those forms.

### **Analysis & Determination**

10. Before this Court can delve into the substantive merits of the appeal, it is duty-bound to first determine, *suo motu*, whether it is vested with the requisite jurisdiction to hear and determine it. The jurisdiction of a Court is its lifeblood; without it, a court cannot take a single step. As was definitively stated in the celebrated case of ***Owners of Motor Vessel 'Lillian S' vs Caltex Oil (Kenya) Ltd KLR 1***, jurisdiction is everything, and a court that finds it lacks jurisdiction must down its tools.
11. This Court is designated as the High Court of Kenya. The subject matter of the suit, and this appeal, as is common ground between the parties, is the ownership, title and alleged fraudulent transfer of land parcel KIGANJO/NEMBU/258. This dispute, therefore, relates squarely to the use and occupation of, and title to, land.
12. The constitutional architecture of the Judiciary, as established by The Constitution, is pertinent. Article 162(2)(b) mandates Parliament to establish a superior court, with the status of the High Court, to hear and determine disputes relating to environment and the use and occupation of, and title to, land. Pursuant to that constitutional command, Parliament enacted the Environment and Land Court Act. The jurisdiction of the Court is delineated in section 13. Section 13(2) grants the Environment and Land Court the jurisdiction to hear and determine disputes, including those relating to land use, planning, title, tenure, boundaries. The original suit in the trial court was, without a shadow of a doubt, a dispute concerning land title and tenure.
13. The constitutional ouster of the High Court's jurisdiction over such matters is express. Article 165(5)(b) of The Constitution provides, in unambiguous terms that the High Court shall not have jurisdiction in respect of matters

falling within the jurisdiction of the courts contemplated in Article 162 (2). This appeal, however, is not one of original jurisdiction; it is an appeal from a subordinate court. The user's query specifically directs this Court to consider Section 13 of the Environment and Land Court Act. The dispositive provision is section 13(4) of the Act, which provides that in addition to the matters referred to in subsections (1) and (2), the Environment and Land 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. The chain of reasoning is, therefore, inescapable: the original suit was a dispute over land title, which falls within the exclusive jurisdiction of the Environment and Land Court. Section 13(4) of the Act explicitly vests the Court with appellate jurisdiction over decisions from the subordinate courts concerning such matters. Article 165(5) expressly prohibits the High Court from assuming jurisdiction in such matters.

14. The legal position has been cemented the Supreme Court of Kenya. In the *locus classicus* of **Republic vs Karisa Chengo & 2 Others [2015] eKLR**, the apex court affirmed that the High Court, the Environment and Land Court, and the Employment and Labour Relations Court are distinct superior courts of equal status. Their jurisdictions are specialised, autonomous, and watertight; there is no provision for cross-jurisdiction. An appeal from a Magistrate's Court on a land matter must be heard by the Environment and Land Court, just as an appeal on a labour matter must be heard by the Employment and Labor Relations Court.
15. It is, therefore, plain that this appeal has been filed in the wrong court. This Court is constitutionally and statutorily barred from hearing it. The appeal is, consequently, incompetent and must be struck out.
16. Since the appeal is struck out on a point of law regarding jurisdiction, which was taken by the Court *suo motu* and not by either party, the most equitable order as to costs is that each party shall bear its own costs.

**Dated and Delivered at THIKA this 14 day of NOVEMBER 2025**

**HELENE R. NAMISI  
JUDGE OF THE HIGH COURT**

Delivered virtually in the presence of:

For Appellant: Njeri Kiarie h/b Ndungu Mwaura  
For Respondents: N/A  
Court Assistant: Lucy Mwangi

Judgement