



**Kariuki (Suing as the Administrator of the Estate of Samuel Kariuki Chege  
– Deceased) & 8 others v Mwangi & 2 others (Environment and Land  
Appeal E090 of 2022) [2025] KEELC 5733 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5733 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E090 OF 2022**

**JM ONYANGO, J**

**JULY 30, 2025**

**BETWEEN**

**DAVID CHEGE KARIUKI (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF SAMUEL KARIUKI CHEGE – DECEASED) ..... 1<sup>ST</sup> APPELLANT  
EDWARD WANJAGI NDUNGU ..... 2<sup>ND</sup> APPELLANT  
HENRY KIMANI WATHIRU ..... 3<sup>RD</sup> APPELLANT  
LILIAN WANJA MBURU ..... 4<sup>TH</sup> APPELLANT  
VIRGINIA NJERI NDUNG’U ..... 5<sup>TH</sup> APPELLANT  
PETER KAMAU THUO ..... 6<sup>TH</sup> APPELLANT  
MARGARET WARUGURU KANYIRA ..... 7<sup>TH</sup> APPELLANT  
MATIAS NDONGA KABIRU ..... 8<sup>TH</sup> APPELLANT  
JOHN MURIITHI MBARIRE ..... 9<sup>TH</sup> APPELLANT**

**AND**

**NGANGA MWANGI ..... 1<sup>ST</sup> RESPONDENT  
DISTRICT SURVEY RUIRU ..... 2<sup>ND</sup> RESPONDENT  
DISTRICT LAND REGISTRAR RUIRU ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the judgment of Hon. C.K. Kisiangani (SRM)  
delivered on 22nd September 2022 in Civil Suit No. 429 of 2019)*



## JUDGMENT

1. This appeal arises from the judgment of Hon. C.K. Kisiangani (S.R.M) delivered on 22<sup>nd</sup> September, 2022 in Ruiru SPMELC No. 429 OF 2019, which had been consolidated with SPMELC No. 428 of 2019,430 of 2019,431 of 2019 and 48 of 2020.
2. In the suit in the lower court, the 1<sup>st</sup> Respondent filed the suit against the Appellants claiming to be the registered owner of land parcel number Ruiru/Kiu/Block 2 (Githunguri) 3877 which was subsequently subdivided into Ruiru Kiu Block 2 (Githunguri) 23289, 23290, 23299 and 23300 (hereinafter referred to as the suit land). The 1<sup>st</sup> Respondent's claim was that the Appellants were in wrongful occupation of the suit land and that as a result, he had suffered economic loss. He sought inter alia an eviction order to evict the Appellants from the suit land and a permanent injunction against the Appellants from entering or in any way taking possession of the suit land. The 1<sup>st</sup> Respondent also sought mesne profits for the period the Appellants had been in illegal possession of the suit land at Kshs 10,000 each, per month from the date of filing of the suit. Lastly, he prayed to be awarded costs of the suit.
3. The Appellants filed a defence dated 17/12/2019 amended on 14/12/2020 and further amended on 11/5/2021 to include a counter-claim. Through the counter-claim they sought the following orders against the 1<sup>st</sup> Respondent:
  - i. That a declaration be issued that all that parcel of land known as Ruiru/Kiu/Block 2 (Githunguri) 3877 belongs to Samuel Kariuki Mwangi.
  - ii. An order of Permanent Injunction, against the Plaintiff, his agents, employees, heirs and those claiming under the Plaintiff restraining them from trespassing, on the 1<sup>st</sup> to 9<sup>th</sup> Defendants' parcels of land known as Ruiru/Kiu/Block 2 (Githunguri) 23289, 23290,23299 and 23300 which emanated from subdivision of Ruiru /Kiu /Block 2 (Githunguri) 3877.
  - iii. An order directing the 11<sup>th</sup> Defendant (Registrar of Lands Ruiru) to issue the Defendants with title deeds.
  - iv. An order that the 1<sup>st</sup> to 9<sup>th</sup> Defendants have acquired title to the land by virtue of adverse possession.
  - v. Mesne profits.
  - vi. Costs of the counter-claim.
  - vii. Any other relief that the court may deem fit and just to grant.
4. The case proceeded for hearing, and the 1<sup>st</sup> Respondent testified as PW1. The 1<sup>st</sup> Respondent stated that he acquired the suit property from Githunguri Constituency Ranching Company Limited through ballot number 3877, by virtue of being a member of the company, signified by his possession of a share certificate.
5. During cross-examination, the 1<sup>st</sup> Respondent testified that he won a case against Samuel Kariuki Chege, whom the Appellants had alleged to have been the original owner of the suit land. It was the 1<sup>st</sup> Respondent's testimony that Samuel Kariuki Chege was convicted by the High Court in Criminal Case No. 79 of 2017: Republic vs Samuel Kariuki Chege and Francis Karianja Njoroge, and that his



- title deed to the suit land was cancelled. The 1<sup>st</sup> Respondent was subsequently issued with a new title deed to the suit land in 2018.
6. On their part, the Appellants had three witnesses. The 6<sup>th</sup> Appellant testified as DW1; the 4<sup>th</sup> Appellant testified as DW2, while the 7<sup>th</sup> Appellant testified as DW4. The 6<sup>th</sup> Appellant testified that he had lived on plot number 3277 since 1999. He had acquired the said parcel by virtue of being a member of the Ruiru South Umoja Self-Help Group, in which Samuel Kariuki Chege was the chairman. DW1 testified that Samuel Kariuki Chege showed him where to live and that the dispute over the suit land began in 2019, upon the death of the said Samuel Kariuki Chege. He stated that they filed case number E252 of 2020 at the Court of Appeal challenging the judgment to take away the suit land. He further stated that the 1<sup>st</sup> Respondent lived on plot number 3878, which was adjacent to 3877. During cross-examination, he stated that the initial title deed remained in the name of Samuel Kariuki Chege and that he had not been issued with a title to his plot at the time of Samuel Kariuki Chege's death.
  7. The 4<sup>th</sup> Appellant testified that she started living on the suit land in March 1998 after she purchased it from Samuel Chege Kariuki (deceased) by virtue of being a member of Ruiru South Umoja Self Help Group. She stated that the dispute over the suit land began in 2020 after she heard that a suit had been filed in court over the land. She added that the 1<sup>st</sup> Respondent gave her an eviction letter asking her to move out, stating that he was the owner of the suit land.
  8. The 7<sup>th</sup> Appellant reiterated the testimony given by DW1 and DW2. She testified that she was a member of Ruiru South Umoja Self Help Group whose chairman was Samuel Kariuki Chege (deceased). She stated that she was occupying the plot she was allocated by the said group. She added that the 1<sup>st</sup> Respondent ordered them to vacate the suit land in 2019, claiming that he was the owner thereof.
  9. The Ruiru Land Registrar, Robert Mugendi testified as DW3. He told the court that land parcel number Ruiru/Ruiru Kiu Block 2/3877 was registered on 14<sup>th</sup> August 2019 in the name of the 1<sup>st</sup> Respondent and a title deed issued in his name on the same day. On 18<sup>th</sup> September 2019, the 1<sup>st</sup> Respondent subdivided the suit land to produce land parcels number Ruiru/Ruiru Kiu Block 2/23289 to 23330.
  10. He added that in the parcel file, he found: a transfer form from Githunguri Constituency Ranching Company Ltd to the 1<sup>st</sup> Respondent, a clearance certificate in the 1<sup>st</sup> Respondent's favor dated 17<sup>th</sup> July 2019 with respect to Ruiru/Ruiru Kiu Block 2/3877. a court order and a judgment issued by the High Court in Nairobi Criminal Case Number 79 of 201, mutation forms, original consent to subdivide the suit land into 12 plots, original title deeds in the name of the 1<sup>st</sup> Respondent, an application form for consent to sub divide and a letter from the Directorate of Criminal Investigations dated 5<sup>th</sup> February 2020 requesting for documents in respect of the suit land which he produced as part of his evidence.
  11. He testified that the decree by the High Court directed that they cancel the title deed in the name of Samuel Kariuki Chege and issue a new one in the name of the 1<sup>st</sup> Respondent. He added that he neither had any records pertaining to Samuel Kariuki Chege nor a title deed in his name.
  12. Based on the above evidence, the trial magistrate found that the 1<sup>st</sup> Respondent was the rightful owner of the suit land as held by the High Court in Criminal Appeal No. 79 of 2017. The trial magistrate further dismissed the Appellants' counterclaim on the ground that the Appellants could not claim adverse possession over the suit land given that the issue of ownership of the suit land had been pending before court.
  13. It is against this background that the Appellants filed this appeal, citing the following six grounds:



- i. That the learned magistrate erred in law and fact when she ignored the judgment in Thika CMCC No. 319 of 2005 delivered on 8<sup>th</sup> February 2019 by Hon. M.W. Wanjala (SRM). The learned magistrate directed as follows:
  - a. “That the Plaintiff and the Defendant holding ballot number 1233 and 1115 respectively remain in their occupied position on the ground as at the 24<sup>th</sup> May, 2007, when the survey was carried out.
  - b. A direction is made to the district survey Thika and the District Land Registrar Thika to accordingly amend the map to accommodate the two plots arising out of ballot numbers 1233 and 1115.
  - c. A direction is made that the title no. Githunguri/3877 be surrendered within the next seven (7) days to facilitate the process.
  - d. The Plaintiff and the Defendant to equally share costs if any that may be incurred as a result of the process.”
- ii. That the learned magistrate erred in law and fact when she ignored the fact that the Appellants were purchasers of the property from the Defendant in Thika CMCC No. 319 of 2005.
- iii. That the learned magistrate erred in law and fact when she wholly relied on the judgment in Criminal Appeal No. 79 of 2017, delivered by Hon. L. Kimaru on 10<sup>th</sup> July 2019, where the learned judge cancelled the title deed of Samuel Kariuki Chege, the same being for LR No. Ruiru/Kiu Block 2 (Githunguri) 3877, an order that had been declined by Hon. Wanjala and whose title deed was no longer in the hands of Samuel Kariuki Chege, the same having been surrendered to the Registrar Thika as per the orders of Hon. Wanjala, the learned judge having made judgment on a situation that was no longer obtaining.
- iv. That the learned magistrate erred in law and fact when she ignored the fact that the Appellants herein were purchasers for value without notice and that they had stayed on the suit property for more than twelve (12) years and have constructed permanent dwelling houses.
- v. That the learned magistrate erred in law and fact when she delivered judgment on a suit that she clearly did not have pecuniary jurisdiction.
- vi. That the learned magistrate erred in law and fact when she indicated that the issue of adverse possession in favour of the Appellants did not arise because the matter was still in court ignoring the fact that the Appellants were not party to those litigations and they were never at any time enjoined to them.

14. The appeal was canvassed by way of written submissions.

### **Appellant’s Submissions**

15. The Appellant filed written submissions dated 2<sup>nd</sup> December 2022 through M/s Prof. Kiama Wangai & Company Advocates.
16. Counsel submitted that the dispute over the suit land was initially before Hon. M. W. Wanjala in Thika Civil Suit No. 319 of 2005: Nganga Mwangi vs Samuel Kariuki Mwangi (As trustees of Ruiru South Help Group), Githunguri Constituency Ranching Company Limited and James Kamau Wamwangi. Counsel further submitted that in the said suit the 1<sup>st</sup> Respondent stated that Land Parcel No.Kiu/ Githunguri/Block that was in issue in the said case belonged to him. Counsel added that the 1<sup>st</sup>



Respondent stated that he took out a ballot in 1983 and occupied the parcel in 1984, where he constructed a house and lived. Counsel contended that the 1<sup>st</sup> Respondent produced nine exhibits, including a bundle of receipts issued by the 2<sup>nd</sup> Defendant in the said suit, a share certificate dated 13<sup>th</sup> October, 1983, and another one dated 5<sup>th</sup> October, 1984. Counsel further contended that the 1<sup>st</sup> Respondent's position was that the land that he occupied belonged to him and that the Defendant had fraudulently caused the registration of the land in his name.

17. Counsel contended that the late Samuel Kariuki Mwangi (1st Defendant) stated that he held the parcel in question as a trustee of Ruiru South Umoja Self Help Group, which had allegedly purchased the land from a Ms. Ndira Njoroge in the early 1990s. Counsel further contended that Samuel Kariuki stated that although Ms. Ndira Njoroge did not possess a title deed at the time of purchase, she provided a share certificate No. 2322 and a ballot number 1115 issued by the Githunguri Constituency Ranching Company. He added that based on the aforementioned documents, Samuel Kariuki was subsequently issued a share certificate No. 8501 and a clearance certificate by the Githunguri Constituency Ranching Company, and thereafter acquired a title deed on 24<sup>th</sup> June 2004.

18. Counsel added that Samuel Kariuki testified as follows during hearing:

“I have sold part of this parcel of land to 16 people. The Plaintiff is currently in occupation of plot 138, which is a different parcel from mine. The Plaintiff is not in occupation of land... It is true that Nganga's parcel is 1233. He said that he did not want it. It was by a fraudster. He wanted to be allocated a parcel near the road. His parcel is separate from mine, but we share a boundary.”

19. Counsel contended that a surveyor's report produced in the suit indicated that in the adjusted map, all the parcels had retained their approximate position on the ground except for parcel number 1115 which had been re-positioned to the far-right hand corner. Counsel further contended that the report stated that the position of ballot 1233 was on title no. Githunguri /3876 which was owned by Daniel Muiruri Njoroge. Counsel added that the Surveyor recommended allowing ballots 1115 and 1233 belonging to the parties to remain in the occupied position. Counsel stated that the said report also recommended the amendment of the map to accommodate the two parcels which would however affect the acreage of 3877 and 3879.

20. Counsel submitted that the court in CMCC No. 319 of 2005 considered the surveyor's report and proceeded to make the following decree in the matter:

- a. That the 1<sup>st</sup> Respondent (Plaintiff) and Samuel Kariuki Mwangi (the Defendant) holding ballot number 1233 and 1115 respectively, remain in their occupied position on the ground as at the 24<sup>th</sup> May, 2007 when the survey was carried out. QUOTE
- b. A direction is made to the District Surveyor Thika and the District Land Registrar Thika to accordingly amend the map to accommodate the two plots arising out of ballots numbers 1233 and 1115.
- c. A direction is made that the title no. Githunguri/3877 be surrendered within the next seven (7) days to facilitate the process.
- d. The Plaintiff and the Defendant to equally share costs if any that may be incurred as a result of the process.
- e. The claims are made in the plaint and the counterclaim are otherwise declined.
- f. Each party to bear their own costs of the suit.



21. Counsel argued that the issue of ownership of the suit land was resolved by Hon. M.W. Wanjala through the aforementioned orders and that Samuel Kariuki surrendered the title to the suit land to the Chief Land Registrar in compliance with the said orders.
22. Counsel contended that the Director of Criminal Investigations later filed Nbi Criminal Case No. 644 of 2012 against Samuel Kariuki Chege and Francis Kairianja Njoroge over allegations of fraudulently registering the suit land in their names. Counsel further contended that the accused in the said matter were acquitted on 3rd August 2016. An appeal was preferred against the acquittal vide Criminal Appeal No. 79 of 2017, and on 10<sup>th</sup> July 2019, a judgment was delivered by the High court (Kimaru J) cancelling the title deed that was registered in the name of Samuel Kariuki Mwangi. Counsel faulted the said decision on the ground that the issue of the title to the suit land had already been settled by the Chief Magistrate Court in CMCC No.319 of 2005 vide its judgment dated 8<sup>th</sup> February 2019 and the title deed had already been surrendered to the Chief Land Registrar.
23. Counsel submitted that the 1<sup>st</sup> Respondent filed both criminal and civil suits against the Appellants. The said civil suits filed at the Ruiru Magistrates Court are the subject of this appeal. Counsel faulted the decision by Justice Kimaru in Criminal Appeal No. 79 of 2017, stating that the said court lacked jurisdiction over land disputes and that it could not purport to sit on appeal of the orders given by Hon. Wanjala in CMCC No.319 of 2005.
24. Counsel contended that the Appellants are the persons indicated to have purchased the suit land from Samuel Kariuki (deceased) in the Judgment delivered by Hon. Wanjala in CMCC No.319 of 2005. Counsel further contended that the Appellants were neither parties to the civil suit nor the criminal proceedings between the 1<sup>st</sup> Respondent and the late Samuel Kariuki Chege. He added that the Judgment by Hon. Kimaru J was delivered when the said Samuel Kariuki Chege was dead, hence it was not possible to appeal against the said decision.
25. Counsel contended that the trial court lacked pecuniary jurisdiction to determine the suit given that the suit land was valued at Kshs 70,000,000 which exceeded the pecuniary jurisdiction of the court of Kshs 7,000,000.
26. In conclusion, counsel submitted that the Appellants were innocent 3rd generation purchasers for value without notice of any fraud.

### **1<sup>st</sup> Respondent's Submissions.**

27. The 1<sup>st</sup> Respondent filed written submissions dated 20<sup>th</sup> January 2025 through M/s Wangui Kuria & Company Advocates. Counsel for the 1<sup>st</sup> Respondent submitted that the Appellants' defense that they were bona fide purchasers for value without notice could not hold water. Counsel further submitted that the Appellants only produced a copy of ballot number 1115 and share certificates in their names issued by Ruiru South Umoja Self-Help Group as well a share certificate in the name of Ndira Njoroge issued by Githunguri Constituency Ranching Company Limited. Counsel faulted the Appellants for neither producing any documents to show how the share certificates were transferred from Githunguri Constituency Ranching Company to Ruiru South Umoja Self Help Group nor a copy of the title in the name of Samuel Kariuki Mwangi.
28. Counsel argued that the Appellants did not do their due diligence hence they could not be considered to be bona fide purchasers for value. Counsel contended that the 1<sup>st</sup> Respondent acquired the suit land from Githunguri Constituency Ranching Company Limited in 1983 whereas Samuel Kariuki Mwangi (deceased) purported to have acquired the suit land from Ndira Njoroge in the 1990s. Counsel further contended that the Appellants ought to have conducted a search on the suit land before purchasing it.



29. Counsel submitted that he who alleges must prove, and he was of the view that the Appellants had failed to prove that they conducted due diligence before settling on the suit land. She further pointed out that the title in the name of Samuel Kariuki Mwangi was declared illegal by the High Court in Criminal Case No. 79 of 2017; hence, any subsequent transactions conducted by him thereof were null and void. Counsel relied on Section 107 (1) of the *Evidence Act* and the decisions in the cases of Dina Management Limited vs County Government of Mombasa & 5 Others [2023] and Arthi Highway Developers Limited vs West End Butchery Limited & 6 Others [2015].
30. On the ground of pecuniary jurisdiction, counsel contended that the Appellants did not avail a valuation report of the suit land. Counsel added that the Appellants ought to have raised the issue of jurisdiction in their defence at the earliest opportunity; therefore, the issue was overtaken by events. She relied on the case of Phoenix of E.A Assurance Company Limited vs S. M. Thiga t/a Newspaper Service [2019] KECA 767 (KLR) in support of his submission.
31. It was her further submission that the prayer for an order of adverse possession is untenable because the Appellants have not been in peaceful occupation of the suit land, given that ownership of the suit land was the bone of contention in Thika CMCC 319 OF 2005: Nganga Mwangi vs Samuel Kariuki Mwangi & 2 Others. Counsel added that the validity of the title registered in the name of Samuel Kariuki Mwangi was contested in High Court Criminal Appeal No. 79 of 2017. Counsel contended that the Appellants had been on the suit land illegally despite the issue of ownership being in contention in court severally, thus compelling the 1<sup>st</sup> Respondent to initiate the suit in the lower court seeking eviction orders. Counsel urged this court to dismiss the Appellants' appeal and uphold the decision of the lower court.
32. This being a first appeal, this court is enjoined to revisit the evidence that was tendered before the trial court afresh, analyze it, evaluate it and arrive at its own independent findings and conclusions, as was stated in the case of *Selle vs. Associated Motor Boat Company (1968) EA 123*.

### **Analysis and Determination**

33. Having considered the pleadings, evidence on record, Grounds of Appeal and rival submissions, the main issues for determination are:
  - i. Whether the trial magistrate erred in allowing the 1<sup>st</sup> Respondent's case and dismissing the Appellants' counterclaim.
  - ii. Whether the trial court lacked jurisdiction to adjudicate over the matter.
34. This being a first appeal, my role is to conduct a careful reappraisal of the evidence and issues presented before the trial court, to sift through the record with a discerning eye, and to reach my own considered conclusions. In *Kenya Ports Authority v Kuston (Kenya) Limited (2009) 2EA 212* the court stated as follows:
 

“On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”
35. The main ground upon which the suit was allowed and the counterclaim dismissed was that the High Court in Criminal Appeal No. 79 of 2017 had already made a determination on the issue of ownership of land parcel number Ruiru/Kiu/Block 2 (Githunguri) 3877. Through its Judgment dated 10<sup>th</sup> July



- 2019, the court (Kimaru J) found that Samuel Kariuki Chege procured the registration of the suit property by false pretences. The High Court proceeded to enter a conviction against Samuel Kariuki Chege for the charges of conspiracy to defraud. The High Court also gave an order directing the cancellation of the title of land parcel number Ruiru/Kiu Block 2 (Githunguri) 3877 registered in the name of Samuel Kariuki Chege and that the 1<sup>st</sup> Respondent be registered as the owner.
36. The trial magistrate further dismissed the Appellants' counterclaim on the ground that the Appellants could not claim adverse possession over the suit land given that the issue of ownership of the suit land had been pending before the court.
  37. It is firmly established that the Environment and Land Court (ELC) does not possess the authority to overturn or ignore a decision made by the High Court, even where the latter's decision is alleged to be illegal. The ELC is a superior court with equal status to the High Court under Article 162(2)(b) of *the Constitution* and the *Environment and Land Court Act* No. 19 of 2011, and is empowered to hear and determine disputes relating to environment and land use, occupation, and title, but it does not sit on appeal over decisions by the High Court.
  38. The Supreme Court has clarified, in *Republic vs Karisa Chengo & 2 Others* (2017), that the ELC and its sister court, the Employment and Labour Relations Court, are courts of equal status, each operating within its own distinct and autonomous jurisdictional boundaries. Neither court may review, alter, or set aside decisions issued by the other, including those of the High Court. To do so would exceed their legally prescribed jurisdiction and render any such decision void ab initio.
  39. Consequently, even if a High Court judgment is alleged to be illegal, the appropriate legal remedy is to appeal to the Court of Appeal, not for the ELC to disregard or re-determine the case. The doctrine of superior court parity mandates that such decisions may only be challenged through the formal appellate process, not through collateral attack before a court of equal standing.
  40. If a High Court (including on criminal appeal) orders cancellation of a title deed on grounds of forgery or fraudulent acquisition, the title is cancelled as part of the criminal judgment. For example, in *Kahonge* (suing through the legal representative of Joseph Kahonge Muthoni (deceased)) vs *Macharia* (2022), the High Court convicted the accused and ordered cancellation of the title deed, registering the land in the name of the aggrieved party.
  41. In *Republic vs Kahonge* [2022] eKLR, the High Court relied on Section 47A of the *Evidence Act* to uphold the cancellation of a land title in a civil case, following a criminal conviction for forgery.
  42. Under Section 47A of the *Evidence Act*, once the time for appeal has lapsed or after any appeal decision, the conviction becomes conclusive evidence of fraud, supporting title cancellation in subsequent proceedings.
  43. If the title cancellation was ordered as part of the criminal judgment, the only route would have been to pursue an appeal in the criminal proceedings.
  44. However owing to the demise of Samwel Kariuki Chege the appeal window has closed. This therefore means that the conviction is final, and the title cancellation stands under Section 47A of the *Evidence Act*.

#### **Whether the trial court lacked jurisdiction to adjudicate over the matter.**

45. The Appellants have contended that the trial court lacked jurisdiction. A perusal of the lower court record indicates that the issue of the court's jurisdiction was brought to the court's attention through the 1<sup>st</sup> to 8<sup>th</sup> Defendants' Notice of Motion dated 18<sup>th</sup> July 2022 based on the supporting affidavit of



Henry Kimani Wathiru. Annexed to the said affidavit is a valuation report by Tuliflocks Limited which placed the value of land parcel number 3877 at Kshs. 70 million. In her ruling dated 22.9.2022, the trial magistrate dismissed the application on the grounds that Henry Kimani Wathiru had been removed from the proceedings on 25<sup>th</sup> March 2022. I have perused the lower court record and I have not come across any proceedings on 25<sup>th</sup> March 2022. However, on 23<sup>rd</sup> March 2021 the said Henry Wathiru Kimani and Peter Kamau Thuo who were the 1<sup>st</sup> and 5<sup>th</sup> Defendants respectively were withdrawn from the proceedings and the case proceeded against the remaining defendants. It is unfortunate that none of the parties filed their submissions on the application although it is indicated in the ruling that they were granted 14 days to file their submissions.

46. Much as the trial magistrate was right in pointing out that the supporting affidavit was sworn by a person who was no longer a party to the suit, I am of the humble view that she ought not to have treated the issue of jurisdiction lightly as jurisdiction is a matter which the court can on its own motion interrogate.
47. Halsbury's Laws of England 4<sup>th</sup> Edition, Vol. 10, paragraph 314, defines jurisdiction as:-  
‘By ‘jurisdiction’ is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.’
48. The jurisdiction of the court flows from the constitution and statute. In The Matter of Advisory Opinion of the Court under Article 163 of the constitution - Application No. 2 of 2011 at paragraph 30, the Supreme Court held: -  
“It is trite law that a court may not arrogate to itself jurisdiction through the craft of interpretation or by way of endeavours to discern or interpret the intentions of Parliament, where the legislation is clear and there is no ambiguity.”
49. Similarly, the Supreme Court in the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank & 2 others, Application No. 2 of 2011 [2012] eKLR stated as follows;  
“A court’s jurisdiction flows from the Constitution or legislation or both. Thus a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred by law.”
50. It is trite that jurisdiction is the soul and lifeblood of judicial activity. Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio. As was stated in The Owners of the Motor Vessel Lilian ‘S’ v Caltex Kenya Ltd (1989) KLR 1), jurisdiction is everything and without it the court has no power to make any further step and must down its tools.
51. In the same case, Nyarangi J. remarked that:  
I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it.
52. It goes without saying that parties are expected to raise the issue of jurisdiction at the earliest opportunity. However, since jurisdiction goes to the question of judicial authority to hear and determine cases, the courts have consistently held that the issue of jurisdiction can be properly raised by a party at any stage, including on appeal. Hence, in Floriculture International Ltd v Central Kenya



Ltd & 3 Others (1995) eKLR, the Court of Appeal held that the issue of jurisdiction can be argued at any time. The Court remarked as follows:

“It has been held in the case of *Kenindia Assurance Co. Ltd v Otiende* (1989) 2 KAR 162 that the normal rule that a party could not raise for the first time on appeal a point he had failed to raise in the High Court, did not, and could not apply when the issue sought to be raised de novo on appeal went to jurisdiction.

53. The jurisdiction of the Magistrates Court to handle land matters is conferred by the Magistrates Court Act 2015. Section 9(a) provides as follows:

Claims in employment, labour relations claims, land and environment

9. A Magistrates court shall:

a. In exercise of the jurisdiction conferred upon it by Section 26 of the *Environment and Land Court Act* (Cap 12A) and subject to the pecuniary limits under Section 7(1) hear and determine claims relating to:-

(i) Environmental planning and protection, climate issues, land use planning, title tenure, boundaries, rates, rent valuations mining, minerals and other natural resources.

54. Section 7 of the Act provides that:

7. Civil Jurisdiction of a Magistrates court

1. A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—

- (a) twenty million shillings, where the court is presided over by a chief magistrate;
- (b) fifteen million shillings, where the court is presided over by a senior principal magistrate;
- (c) ten million shillings, where the court is presided over by a principal magistrate;
- (d) seven million shillings, where the court is presided over by a senior resident magistrate; or
- (e) five million shillings, where the court is presided over by a resident magistrate.

55. At the time she conducted the hearing, the trial magistrate was a Senior Resident Magistrate. Even in the absence of a valuation report the trial magistrate ought to have taken Judicial notice that a developed plot measuring one acre in Ruiru which is a rapidly growing urban centre is worth more than Kshs. 7 Million. Alternatively, she sought to have directed that the parties obtain valuation report from a government valuer. Her failure to do so was a serious misdirection.

56. In view of the foregoing and guided by the above cited authorities I am constrained to hold that the learned trial magistrate fell into error when she proceeded to hear and determine a matter in which the court had no pecuniary jurisdiction.

57. It is on this ground therefore that the appeal succeeds, and I make the following orders:



- a. The judgment of the lower court is hereby set aside.
- b. The entire proceedings and consequential orders in Ruiru CM's Civil Case No. 429 of 2019 are hereby declared a nullity.
- c. The Respondents are at liberty to institute fresh proceedings in a court of competent jurisdiction subject to the provisions of the [Limitation of Actions Act](#).
- d. In view of the circumstances of this case, each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED THIS 30TH DAY OF JULY 2025.**

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**J. M ONYANGO**

**JUDGE**

In the presence of:

1. Nyokabi for Ms Wangui Kuria for the 1st Respondent
2. No appearance for the Appellant

Court Assistant: Hinga

