



Ngugi v Muthusi (Suing as the Administrator and Beneficiary of the Estate of the Late Jackson Muthusi Mwano); City Chicken & Eggs Dealers Cooperative Limited (Interested Party) (Miscellaneous Civil Case E080 of 2025) [2026] KEELC 210 (KLR) (21 January 2026) (Ruling)

Neutral citation: [2026] KEELC 210 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS CIVIL CASE E080 OF 2025**

**MN KULLOW, J
JANUARY 21, 2026**

BETWEEN

PHYLLIS MUGEKI NGUGI APPLICANT

AND

LYDIA JENNY KATUKU MUTHUSI (SUING AS THE ADMINISTRATOR AND BENEFICIARY OF THE ESTATE OF THE LATE JACKSON MUTHUSI MWANO) RESPONDENT

AND

CITY CHICKEN & EGGS DEALERS COOPERATIVE LIMITED .. INTERESTED PARTY

RULING

1. The suit is in relation to land title no Nairobi/Block/122/85 herein referred to as the suit property. The applicant has filed a notice of Motion Application dated 4th March 2025 seeking for orders that this honorable court do enforce the judgement that was issued in Civil Appeal 81 of 2019 Lydiah Jenny Katuku Muthusi v City Chicken & Eggs Dealers Co-operative Limited & another [2021] where the appeal by the 1st respondent herein was dismissed and applicant was declared as the bona fide owner of the suit property.
2. Prayers in the application
 1. Spent
 2. That this Honourable court be pleased to issue an Order for revocation of any title to parcel number Nairobi/Block 122/85 issued to any other person including but not limited to the Respondent herein.



3. That this Honourable court be pleased to issue an Order for rectification of the Register for property title number Nairobi/Block 122/85 at the Lands Registry Nairobi, on the ownership details and state the Applicant as the rightful registered owner of the said property.
 4. That this Honourable Court be pleased to direct the Lands Registrar, Nairobi Lands Registry to rectify the register for property title number Nairobi/Block 122/85 and state the Applicant as the registered owner of the said property.
 5. That this Honourable Court be pleased to direct the Lands Registrar, Nairobi Lands Registry, to issue a new title over property title number Nairobi/Block 122/85 to the Applicant herein as the rightful owner of the said property.
 6. That cost of and occasioned by this application be borne by the Respondent.
3. The grounds are on the face of the Application and are set out in paragraphs 1 to and as in the supporting affidavit sworn by the Applicant herein sworn on the 4th March 2025.
 4. She deponed that the suit property had been subjected to litigation in the Environment and Land court matter 1542 of 2013 filed by the respondent herein, which matter was seeking proprietary rights but was dismissed. That the respondent appealed on the same and in Civil Appeal 81 of 2019 Lydia Jenny Katuku Muthusi v City Chicken & Eggs Dealers Co-operative Limited & another [2021] where the appellate court dismissed the appeal upholding the trial court's decision that the respondent had failed to show her ownership on the suit property. The applicant further deponed that the respondent despite being aware of the judgement filed Milimani Commercial Courts MCELC case No E290 OF 2022 Lydia Jenny Katuku Muthusi (Suing as the administrator and beneficiary of The Estate of the late Jackson Muthusi Muwano) versus George Karanja Ngugi and City Chicken & Eggs Dealers Co-operative which matter gave rise to a judgement that allowed the respondent acquire title to the suit property under false pretences. She stated that she is however apprehensive that if the orders as in the application are not given, the respondent will attempt to occupy the suit property and defeating the rights her constitutional rights under article 40.

Reply

5. The application is opposed. There is a replying affidavit sworn by the Respondent herein sworn on the 5th June 2025. He deponed that the application was defective insisting that the applicant's claim over the suit property was misplaced as the suit property 118 and No 20 were totally different and that the judgements relied in the application conferred ownership to plot 20 and not 118 that she had claims over.
6. She however deponed that records indicated that plot No 118 was the same as the suit property and that occupancy of plot 118 the one she claims rights over was by the applicant's son.

Submissions

7. The court directed the application to be canvassed by way of written submissions. The applicant filed submissions dated 28th July 2025, whereas the respondent filed submissions dated 10th November 2025.

Issues arising in the applicant's submissions

1. Whether the orders sought by the applicant should be granted

8. The applicant reiterated the contents in her supporting affidavit. That the respondent had through false pretences been registered as the legal owner of the suit property.



9. She further submitted on the doctrine of res judicata pointing out to the provisions of section 7 of the *civil procedure Act*. She submitted that the court of appeal had already decided on ownership and in the interest of justice, the same should be upheld by this court. She buttressed this with the court's decision in Prof. Christopher Mwangi Gakuu -vs- Kenya National Highway Authority Constitutional Application No. 585 of 2012.

Issues raised in the respondent's submissions

1. Whether this Honourable Court has jurisdiction to enforce a judgment delivered by a court of equal jurisdiction when the Applicant has invoked a miscellaneous application contrary to the requirements of the *Civil Procedure Act* and mandatory execution procedure under Order 22 of the Civil Procedure Rules.
 2. Who should bear the costs?
10. The respondent submitted that the trial court which heard and determined the original suit remains the proper forum to enforce its judgment. And this Honourable Court lacks jurisdiction to execute or enforce the said judgment through the present application. She further submitted that the applicant had not attached any decree and without it this court cannot act on a miscellaneous application as the decree anchors the authority of the trial court over the matter and having it on record would affirm that only the issuing court has the power to issue further orders such as the one the applicant seeks. She submitted that the failure to extract the decree is deliberate by the applicant to invoke jurisdiction of a court that is not vested with the same. She relied on the case of Owners of Motor Vessel "Lilian S\$" -vs- Caltex Oil (Kenya) Ltd Civil Appeal 50 of 1989 where the Court of Appeal held that Jurisdiction is everything, without it a court has no power to make one more step.

Legal issues for this court's determination

11. From the submissions of both parties the only issues for determination is

1. Whether the court has the jurisdiction to entertain the application

12. In general, a Court is bound to entertain proceedings that fall within its jurisdiction. Jurisdiction is the very basis on which any court tries a case; it is the lifeline of all trials. A trial without jurisdiction is a nullity. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given. A Court's jurisdiction flows from either *the Constitution*, legislation or both or by principles laid out in judicial precedent. The locus classicus decision in Kenya on jurisdiction is the celebrated case of Owners of Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd where it was held as follows:-

.... Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

13. The respondent contends that this court lacks the jurisdiction to entertain this application since only the trial court can enforce its judgement and further that the application offends the provisions of the civil procedure rules that lays down the process for execution of judgement.
14. I would tend to disagree with the respondent since the trial court in this case was this court and the matter went for appeal in the court of appeal, where the decision of the ELC court was upheld, the trial court is therefore the right court to facilitate the enforcement. The ELC court serves as the forum



for executing and overseeing the specific enforcement directions given by higher courts in land and environment matters. The Environment and Land Court has power to enforce its own orders such as a decree for damages as against both private and public bodies, section 14 of the *Environment and Land Court Act* is clear that a judgment, award, order or decree of the Court shall be enforceable in accordance with the *Civil Procedure Act*.

(14) A judgment, award, order or decree of the Court shall be enforceable in accordance with the Civil Procedure Rules.

15. I therefore hold the view and submit that this court is vested with the jurisdiction to entertain this application as it seeks to enforce a judgement emanating from it.
16. Moving on to the application the only issue for determination is whether the application is merited.
17. The issue for determination in ELC No.1542 of 2013 was on the issue of ownership on the suit property and the court in dismissing the plaintiff's case who is the respondent herein stated at paragraph 20 as below Parties filed submissions. The issue for determination is whether the court should grant the orders sought by the Plaintiff. "The Plaintiff failed to prove that plot number 118 which her late husband purchased from Henry Mungai Kiningo became plot number 20 when re-balloting was done in 1991. Henry Mungai Kiningo transferred the three plots he was allocated after the re-balloting in 1991 to other persons. The Plaintiff and her husband were not in Kenya at the time the re-balloting was done. There is no evidence that the Plaintiff's late husband went to the Ministry of Cooperatives to establish what plot was allocated to him after the re-balloting in 1991. From the evidence adduced, the court is not satisfied that the Plaintiff established on a balance of probability that her claim is merited." The court agrees with the Defendants that the Plaintiff's claim is statute barred having been filed more than 12 years from the date the cause of action arose. 23. The suit is dismissed with costs to the Defendant."
18. The trial court in dismissing the plaintiff's claim, attributed ownership to the 2nd defendant indicating that based on evidence produced, the plaintiff had not established how she was the owner of the suit property having failed to place a connection as between plots 118 and plot 20, the court on the other hand indicated that 2nd defendant had established how the suit property was transferred to her, a decision upheld by the appellate court. The judgement of the court conferred the rights of the suit property to the 2nd defendant who is the applicant herein and I hold the view that she is entitled to enjoy the rights of a bona fide owner of the property. The orders being sought in the application are to enable the applicant get the title to property thereby conferring all the rights as in section 26(1) of the *Land registration Act* 2012 which section reads,

The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge."

Conclusion:

19. I hereby submit that the application dated 4th March 2025 is merited and the same is allowed.

It is so ordered!

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 21ST DAY OF JANUARY, 2026.



MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr. Wachira holding brief for Kimathi for the Applicant

No appearance for the Respondents

Philomena W. Court Assistant

