



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CIVIL APPEAL NO. E055 OF 2023

MUKINYE ENTERPRISES LIMITED.....1ST

APPELLANT

JAMES NJENGA WAWERU.....2ND

APPELLANT

SAMUEL KARIUKI MWANGI.....3RD

APPELLANT

VERSUS

TONNY MUGAMBI MIKWA.....1ST

RESPONDENT

1. JARRET ONYANGO ODWAI

2. JULIUS NJATHI NGUKU

**3. CAROLINE ACHIENG ABOUR)... (*sued as trustees
of Nairobi Christian Church*)2ND**

RESPONDENT

***(Being an Appeal against the Judgment and Decree given
on 6th June 2023 by Hon. S. Atambo, Chief Magistrate in
Thika CMCC NO. 26 OF 2018)***

BETWEEN

TONNY MUGAMBI MIKWA.....

.....PLAINTIFF

VERSUS

MUKINYE ENTERPRISES LIMITED.....1ST

DEFENDANT

JAMES NJENGA WAWERU.....2ND
DEFENDANT

SAMUEL KARIUKI MWANGI.....3RD
DEFENDANT

JOSEPH WANJOHI MWANGI.....4TH
DEFENDANT

JARRET ONYANGO ODWAI)

JULIUS NJATHI NGUKU)

CAROLINE ACHIENG ABOUR)..... (sued as trustees
of Nairobi Christian Church)5TH TO 7TH
DEFENDANTS

JUDGMENT

1. In her Judgement dated 06/06/2023 in **Thika CMCC 26 of 2018**, Hon. Stella Atambo, CM found that the Respondent was the bona fide owner of LR Ruiru/Kiu Block 14/86 and ordered for cancellation of registration of the Defendants' title and directed that the Defendant do give vacant possession to the Plaintiff. Additionally, she issued a permanent injunction restraining the Defendants and their servants from interfering with the suit property.
2. Aggrieved by this decision, the Appellants filed a Memorandum of Appeal dated 16th September 2022 seeking that the said Judgement be set aside, this Appeal be allowed and costs, on grounds that:
 - 1) The Learned trial Magistrate erred in both law and fact by writing and delivering a Judgment in a matter which she did not hear at any stage in the entire proceedings

or submissions and while the trial Magistrate before whom it was concluded was Hon Dr. A Macharia, PM based at Thika.

- 2) The writing and delivery of the Judgment by the Hon. S. Atambo was tainted with forum shopping on the part of the 1st Respondent as the Hon. S. Atambo was never seized of the proceedings at any state and her taking up the matter to write and or deliver the impugned Judgment was never known to the Appellants or their Advocates and came as a total surprise to the Appellants who expected that the Judgment would delivered by the Trial Magistrate and not by a Magistrate who was never seized of the proceedings at any stage.
- 3) Without prejudice to the above the learned Magistrate grossly misapprehended the core on the Appellants case which was to the effect that the 1st Respondents name did not appear in the 1st Appellants register which was confirmed by the registers produced by the Appellants before the trail Court and that the Appellants and the Court could not insert the 1st Respondent name in the register.
- 4) The learned Magistrate further failed to address the issue that whereas the 1st Respondent claimed to have purchased plot 249 there was absolutely no evidence to show any linkage between Plot No. 249 and the suit property LR Ruiru/Kiu Block 14/86 and that there was

therefore no basis in law to issue the declaration that LR Ruiru/Kiu Block 14/86 belonged to the 1st Respondent

- 5) The findings on the effect that it was the Appellants' burden to disprove that plot No. 249 was not the same as LR Ruiru/Kiu Block 14/86 was erroneous in law as the burden of proof lay with the 1st Respondent and there being no material or evidence to link plot No. 249 TO LR Ruiru/Kiu Block 14/86 - then the incidence of proof did not at any time shift to the Appellants.
- 6) The learned Magistrates finding on (5) above was based on assumption and was not supported by the evidence place before e the trial Court.
- 7) The Learned Magistrate erred in law and on her interpretation of the provision of Section 26 of the Land Registration Act.
- 8) The learned Magistrate erred by her failure to appreciate and apply the provisions of Section 25 of The Land Registration Act.
- 9) The findings by the trail Magistrate on due diligence with respect to the registration and transfer of LR Ruiru/Kiu Block 14/86 to the Appellants and the 2nd Respondent were erroneous and not founded on law.
- 10) The learned Magistrates findings were against the weight of the evidence.

3. This Appeal was canvassed by way of written submissions.

A brief History of the Case

4. According to the 2nd Respondents they purchased the suit property Ruiru/Kiu Block 14/86 from the Appellants after due diligence. The 2nd Respondent who were sued as the 5th to 7th Defendants in the suit in the lower Court are Trustees of Nairobi Christian Church.
5. It is the 2nd Respondent's contention that the Trustees of the Church purchased the suit property procedurally from the registered owners who are the Appellants having conducted both a historical search and an official search.
6. On his part, the 1st Respondent's contention is that he purchased plot number 249 vide a Share Certificate from one Stephen Kilonzo which he alleges was as a result of a subdivision of land parcel reference number 8788/6 owned by the Appellants.
7. That, later when the plot was surveyed it was registered in the Land's Office as Land Parcel Ruiru/Kiu Block 14/86. After the survey the 1st Respondent alleges that the Appellants chose not to register the resultant parcel in his name but they registered the parcel in their names and a Certificate of Lease was issued on 12/05/2016. Later they transferred the parcel to the 2nd Respondent.
8. It is this act of transferring the suit property to the 2nd Respondents by the Appellants that led to the 1st Respondent filing a suit **Thika CMCC 26 of 2018** vide a Plaint where he sought a permanent injunction, a declaration that the Plaintiff/1st Respondent is the owner of the suit parcel Land Parcel Ruiru/Kiu Block 14/86 and an order of

transfer of the suit property from the Defendants to the 1st Respondent.

9. The suit was heard by different Magistrates, first it was Hon Riany who then was transferred. Then the matter was heard and concluded on 28/09/2022 before Hon. Dr Macharia and concluded, but on 19/04/2023 Hon. Dr Macharia sitting in chambers recorded that her Court had no jurisdiction on the matter and she referred the matter to Court 1 for Judgment on 24/05/2023. The Judgment was delivered by Hon. Atambo Chief Magistrate on 6/06/2023 but she never heard the case any time. Further the Judgment was not signed by Hon. Dr Macharia but Hon Atambo.

10. It is this Judgment that is the subject of this Appeal.

11. Parties were directed when they appeared in Court on 16/07/2025 to file and exchange written submissions which they did and the date for Judgment was reserved.

The Appellants' Submissions.

12. The Appellants identified five issues for determination and submitted on them. The first issue is the one on jurisdiction which is a critical issue.

13. The Appellants through the 2nd Respondent filed their submissions dated 23/10/2025 and the 1st Respondent filed their submissions dated 9/10/2025.

14. In their submissions the 2nd Respondent who seemed to submit on behalf Appellants submitted on the five issues and relied on the cases of **Kinyanjui Kamau vs George Kamau [2015] KLR, Ndolo vs Ndolo (2008) KLR (G&F), Vijay**

Morijaria vs Nasingh Madhusingh Darbar & Another [2000]eKLR, Edward Mwangi Irungu vs The Chief Land Registrar & 3 Others (ELC Case No. 96 of 2016)eKLR, Ratilal Gurdhanhai Patel vs Lalji Makaji [1957]EA , Dina Management Ltd vs County Government of Mombasa & 5 Others [2023] KESC 30 (KLR), Samuel Kamere vs Lands Registrar, Kajiado Civil Appeal No. 28 of 2005 [2015] eKLR, Elizabeth Wambui Githinji & 29 Others vs Kenya Urban Roads Authority & 4 Others [2019] KECA 706 (KLR), Fletcher vs Peck, 10 US 87 (1810) among others.

15. The gist of the submissions of the 2nd Respondent and the Appellants is that the learned Magistrate erred for delivering a Judgment in a matter where the Magistrate who heard the matter had no jurisdiction. They referred to the case of **Okongo vs Loibex Builders Limited and 5 Others - KEHC 4855 KLR** where the Court stated that jurisdiction is primordial in every suit.
16. Further, the finding that 2nd Respondent had been engaged in fraud it is the contention of the 2nd Respondent that fraud must be specifically pleaded and proved. Therefore, according to the 2nd Respondent whereas the 1st Respondent pleaded fraud, he never proved it.
17. The 2nd Respondent submits that the Appellants are bona fide purchasers who should be protected. Since they conducted due diligence and followed due process in

purchase of the suit property through both a historical and official search at the Land's Registry.

18. The 2nd Respondent therefore holds the position that the learned Magistrate erred for canceling the title.

19. On their part the 1st Respondent submitted in response to the 2nd Respondent's submissions that the suit at the lower Court proceeded before various Magistrates due to their transfers and that even when it was before Hon Dr Macharia whereas she had no jurisdiction due to the fact that she had not been gazetted, both parties however chose to proceed under her. Finally, having heard the matter she forwarded the file and typed proceedings to Chief Magistrate for delivery of Judgment.

20. According to the 1st Respondent, the Hon Magistrate recognized the importance of expeditious disposal of matters as provided for under Sections 1A and 1B of the Civil Procedure Act.

21. Further, the 1st Respondent contends that Courts rely on records as a resource to administer justice just as this Honorable Court will rely on the record to reach a determination. According to the 1st Respondent, the Appellants have not faulted the proceedings by Hon Dr. Macharia and so it was the 1st Respondent's submissions that grounds 1 and 2 of the appeal is fallacious.

22. On the issue of the 1st Respondent's name not appearing in the register, the 1st Respondent contended that the register produced by the Appellants was not the original one. Further

that the 3rd Appellant in his evidence admitted that the register brought to Court was a summary of the records prepared by Mukinye Enterprises' Advocate after all the Directors died and the fact that in 1990 when the 1st Respondent bought the suit property the 3rd Appellant was not a Director he was not in a position to deny the authenticity of the 1st Respondent's Share Certificate. Infact he never denied that the Share Certificate of Tony Mugambi Mikwa - 1st Respondent emanated from the offices of Mukinye Enterprises Ltd.

23. According to the 1st Respondent, the register presented titled "New Mukinyi Plot Owners Register" showed the new plot number 86 which was listed but the old number was conveniently left out. At the same time, he submits that the register also indicates that the title deed had not been collected and that it belonged to Mukinyi Enterprises.

24. He further submits that the learned Magistrate noted that the registers adduced by the Appellants had inconsistencies since the suit property is not reflected in the first register but it is in the second register but there is no indication in the said register on who owns the plot. Further that the learned Magistrate evidently analysed the evidence and noted that the Appellants did not deny by providing proof to the contrary that the suit property emanated from plot 249. That the 2 maps produced clearly show that plot 249 was the same as plot 86 which resulted in Land Parcel Ruiru/Kiu

Block 14/86 after titles were issued. This is attributed to the new subdivision by the Surveyor.

25. The 1st Respondent also observes that by their own admission the 3rd Appellant agreed that plot number 86 was the one that gave rise to the suit property Land Parcel Ruiru/Kiu Block 14/86.

26. On the bona fide purchaser, fraud and misrepresentation the 1st Respondent submitted that the Appellants have conceded that Mukinye Enterprises Limited caused the suit land to be first registered in the name of the 2nd and 3rd Appellants who were not original officials of the 1st Appellant when the 1st Respondent bought his land. That in fact the 2nd and 3rd Appellants caused the suit land to be registered in the name of the 1st Appellant without a Company resolution. This was illegal and so they could not pass a good title to the Trustees of Nairobi Christian Church.

27. It is the 1st Respondent's submission that the issue of registration of title in the individual names was pointed out by the learned Magistrates who observed that the officials of Mukinye quickly registered the land in their names in mid-2016 and by early 2017 they transferred the land and on their part, the Trustees of Nairobi Christian Church admitted not to have conducted due diligence to establish why the suit property was registered in the names of officials of Mukinye Enterprises yet it was a body corporate. And the learned Magistrate that due diligence included knowing the history of the land.

28. On his part therefore all this point to illegality, fraud and misrepresentation and so the registration was unprocedural and the title was illegal. In his submissions the 1st Respondent relied on the cases of **Munyu Maina vs Hiram Gathiha Maina Civil Appeal No. 239 of 2009** and the case of **Dina Management Ltd vs County Government of Mombasa & 5 Others [2023] KESC 30 (KLR)**,

Analysis and determination

29. The Appellants approached this Court on an Appeal against the Judgment delivered on 6/06/2023 by Hon Stella Atambo Chief Magistrate's Court which awarded the suit property to the 1st Respondent. While ten Grounds of Appeal were canvassed, two jurisdictional pillars dominate this suit:

1) Whether the Magistrate who had not been gazetted as one to handle Environment and Land matters could hear the said matters without jurisdiction.

2) Whether Hon. Atambo CM could deliver a final Judgment in a matter where they did not hear the evidence?

30. The Appellant contends that Hon. Dr. Macharia, who presided over the hearing, admitted in chambers that she had not yet been gazetted to handle Environment and Land Matters.

31. Under Article 162(2)(b) of the Constitution, the Environment and Land Court (ELC) has exclusive original jurisdiction to

hear and determine disputes relating to the environment, use, occupation and title to land.

32. While the ELC Act allows the Chief Justice to appoint specific Magistrates to hear land matters, this power is restricted to duly gazetted Magistrates. Thus, a Magistrate who is not specifically gazetted to handle land matters lacks the authority to hear, determine or make orders in such cases. Any decision made by a Magistrate without the required jurisdiction is a nullity meaning it is void from the beginning. It is therefore clear that a Magistrate does not have inherent jurisdiction over land matters; it is conferred by Parliament and activated by the Chief Justice.

33. Section 26 of the Environment and Land Court Act is the primary enabling provision. It allows the ELC to share its jurisdiction with Subordinate Courts. However, this is not automatic. Further Section 9 of the Magistrates' Courts Act explicitly grants Magistrates' Courts the power to hear and determine claims relating to land and environment, subject to the pecuniary (monetary) limits set out in Section 7 of the same Act.

34. Under Section 26(3) of the ELC Act, the Chief Justice must appoint specific Magistrates via a Gazette Notice to preside over these matters. If a Magistrate hears a case without their name appearing in such a notice, they are acting as a stranger to the suit.

35. Jurisdiction is a bloodline of the Court's powers. In the landmark case of **Owners of the Motor Vessel "Lillian S"**

v Caltex Oil (Kenya) Ltd [1989] KLR 1, the Court of Appeal held:

"Jurisdiction is everything. Without it, a Court has no power to make one more step ... If a Court has no jurisdiction, there is no Court."

36. Additionally in **Law Society of Kenya (Malindi Branch) v Attorney General & Others [2016] eKLR**, while the Court of Appeal later clarified that Magistrates can hear land cases, this litigation established that such power is strictly tied to the formal appointment and the pecuniary limits defined by the Chief Justice.

37. Further in **Karisa Chengo & 2 Others v Republic [2017] eKLR** although a criminal case, the Supreme Court's logic here is often applied to civil jurisdiction where the Court stated that if a Court is not properly constituted including the proper gazettement of its Presiding Officer, it lacks the competence to hear the matter.

38. Also, the Court in **Simeon Gatual Ngai v John Gakuo & 3 Others [2017] eKLR** reinforces that any proceedings conducted by a Judicial Officer who has not been properly vested with the specific jurisdiction (in this case, ELC jurisdiction) are void.

39. In the present case, the trial Magistrate, Hon. Dr. Macharia, made a candid admission in chambers that her Court had no jurisdiction over the matter at hand and forwarded the file to the Chief Magistrate's Court. This admission is fatal. Under **Section 26** of the **ELC Act**, the jurisdiction of a Magistrate

to hear land disputes is not a general power but a **designated power**.

40. Therefore, if as submitted by the Appellant, Hon. Dr. Macharia was not gazetted as per the Environment and Land Court Act and the Magistrates' Courts Act, any proceedings conducted by her are a legal nullity *ab initio*. A Judicial Officer cannot assume power that has not been conferred by a formal Gazette Notice.

41. Following the principle in **Owners of the Motor Vessel "Lillian S"**, this Court finds that Hon. Dr. Macharia was *coram non iudice* the proceedings were held before a Magistrate not competent to hear the matter. Consequently, the record produced was a legal nullity, and the subsequent Judgment by Hon. Atambo, built upon that void record, cannot stand.

42. On the second issue, generally, a Judgment should be read by the Judicial Officer who heard the evidence and conducted the trial. In the instant appeal and my perusal of the lower Court file indicate that the matter was heard by two Magistrates, Hon Riany who on 06/04/2022 indicated that she was on transfer.

43. On 28/09/2022, the matter was heard and concluded before Hon Dr Macharia and she issued a compliance date of 18/01/2023. On 15/03/2023 the matter was scheduled by Hon Wanyaga SRM for Judgment before Hon Dr Macharia on 24/05/2023.

44. However, on 19/04/2023 Hon Dr Macharia sitting in chambers recorded that her Court had no jurisdiction on the matter and referred the matter to Court 1 for Judgment which was delivered by Hon S. Atambo and this was the second fatal flaw. This is because Hon. Atambo, Chief Magistrate, delivered the Judgment despite having not heard the oral testimony.

45. Under **Order 18, Rule 11** of the **Civil Procedure Rules**, a successor Magistrate may take over a suit, but they must follow a specific process. Generally, if a Magistrate is transferred or leaves, the successor may proceed with the evidence recorded by their predecessor. However, the High Court in **Standard Goods Corporation v Harakchand Nathu & Others [1950] 17 EACA 99** and more recently in **Wycliffe Khayesi v Republic [2014] eKLR**, has emphasized that a Judge who has not seen or heard the witnesses is at a severe disadvantage in assessing demeanor and credibility.

46. More importantly, if the predecessor, Hon. Dr. Macharia lacked jurisdiction, the evidence she recorded was dead on arrival. Hon. Atambo could not breathe life into a nullity by delivering a Judgment based on a void record.

47. According to my opinion which is based on several judicial decisions made by Judges of the High Court, Courts of Equal Status, Court of Appeal and our Supreme Court, I hold the view that since the trial Magistrate admitted to not being gazetted, she acted *ultra vires*. In **Samuel Kamau**

Macharia v Kenya Commercial Bank Ltd [2012] eKLR, the Supreme Court held that a Court's jurisdiction flows from the Constitution and Statute. It cannot be conferred by the consent of parties or the silence of the Court.

48. That means that a Judgment delivered by an Officer who did not hear the parties, based on a record produced by an Officer without jurisdiction, is a double nullity.

49. I will therefore not examine the other Grounds of Appeal because lack of jurisdiction by the Hon Magistrate nullifies any proceedings that happened.

50. Given the foregoing I make the following findings:

1) The Appeal is hereby Allowed.

2) The Judgment and Decree of the lower Court in Thika CMCC No. 26 OF 2018 are set aside and declared a nullity.

3) The matter is remitted back to the Magistrate's Court for a Trial De Novo before a Magistrate with the requisite jurisdiction.

4) The costs of this Appeal shall be borne by the 1st Respondent.

DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS AT THIKA THIS 11TH DAY OF FEBRUARY 2026.

**MOGENI J
JUDGE**

In the presence of:-

Mr. King'ara for the 1st, 2nd and 3rd Appellants

1st Respondent - Absent

Mr. Mwangi for the 2nd Respondent

Melita - Court Assistant

**MOGENI J
JUDGE**

ORIGINAL