



**Njeru (Suing as the legal representative of the Estate of Mary Wanjiku Muchira) v Karanja (Environment and Land Appeal E026 of 2022)
[2026] KEELC 650 (KLR) (11 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 650 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND APPEAL E026 OF 2022
SM KIBUNJA, J
FEBRUARY 11, 2026**

BETWEEN

**GAUDEZIO S MUCHIRA S NJERU (SUING AS THE LEGAL REPRESENTATIVE
OF THE ESTATE OF MARY WANJIKU MUCHIRA) APPELLANT**

AND

GITUNGO KARANJA RESPONDENT

(Being an appeal from the judgment of decree the Learned Trial Magistrate Hon. G. W. Kirugumi, PM, delivered on 30th September 2022 in Kerugoya CMELC Case No. 140 of 2019)

JUDGMENT

1. Aggrieved by the decision of the learned trial magistrate delivered on 30th September 2022, the Appellant, who was the Plaintiff before the trial court, lodged this appeal through the memorandum of appeal dated 24th October 2022, raising the following eight (8) grounds: -
 1. That the learned trial magistrate erred in law and in fact by upholding the respondent's preliminary objection and striking out the Appellant's suit, thereby occasioning a miscarriage of justice.
 2. That the learned trial magistrate erred in law and in fact by failing to appreciate or take cognisance of the fact that the suit property, Plot Number B3, Wang'uru, is located in Kirinyaga County and that both the Kerugoya Chief Magistrate's Court and the Wang'uru Chief Magistrate's Court have territorial proximity and jurisdiction over the property.
 3. That the learned trial magistrate erred in law and in fact in failing to find and hold that the Appellant was at liberty to file the suit concerning the said property either at the Kerugoya Chief Magistrate's Court or the Wang'uru Chief Magistrate's Court, both courts having territorial jurisdiction.



4. That the learned trial magistrate erred in law and in fact by basing her findings and ultimate decision on irrelevant matters or considerations, thereby arriving at an erroneous conclusion.
5. That the learned trial magistrate erred in law and in fact in finding or holding that the suit property, Plot Number B3 Wang'uru, is situated outside the territorial jurisdiction of the Kerugoya Chief Magistrate's Court.
6. That the learned trial magistrate erred in law and in fact in finding and holding that the Kerugoya Chief Magistrate's Court lacked jurisdiction to hear and determine CMC ELC No. 140 of 2019.
7. That the learned trial magistrate erred in law and in fact in holding that the Appellant's suit offended the provisions of Sections 12 and 15 of the *Civil Procedure Act*.
8. That the learned trial magistrate erred in law and in fact by failing to properly apply the law in determining and upholding the Respondent's Preliminary Objection.

The appellant therefore seeks for the following prayers: -

- a. That the appeal be allowed.
 - b. That the ruling and orders of the trial court delivered on 30th September 2022 in Kerugoya MCLE No. 140 of 2019 be set aside.
 - c. The respondent's preliminary objection dated 7th July 2022 be dismissed with costs.
 - d. The Appellant be awarded the costs of this appeal as well as the costs of the preliminary objection before the subordinate court.
2. Pursuant to directions of this Court issued on 7th November 2024, 10th March 2025, and 12th May 2025, that the appeal be canvassed through written submissions, the learned counsel for the appellant and respondent filed their submissions dated 9th July 2025 and 28th February 2025 respectively, which the court has considered.
 3. In their submissions, the learned counsel for the Appellant submitted primarily on two issues, the first being whether the learned trial magistrate erred in law and fact in holding that the Kerugoya Chief Magistrate's Court lacked jurisdiction to entertain a suit arising from a plot situated in Mwea within Kirinyaga County; and secondly, who should bear the costs of this appeal. On the question of jurisdiction, counsel submitted that the applicable law is Section 15 of the *Civil Procedure Act*, chapter 21 of Laws of Kenya.

He argued that under that provision, a suit may be instituted where the defendant resides, carries on business, or where the cause of action arose. Counsel maintained that the trial court failed to properly appreciate the breadth of the said Section 15, and instead overlooked the guiding provisions of Sections 1A and 1B of the *Civil Procedure Act*, which enjoin courts to administer justice without undue procedural technicalities.

He urged this Court to find that the preliminary objection was improperly upheld and to allow the appeal with costs.
 4. The learned counsel for the Respondent submitted on one issue, that of whether the preliminary objection dated 7th July 2022 was merited. He submitted that it is not in dispute that Plot No. B3, Wang'uru is situated within Wang'uru Township.



5. He pointed out that Wang’uru hosts two Principal Magistrates’ Courts, which are vested with jurisdiction to hear and determine land disputes pursuant to Section 9 of the Magistrates’ Courts Act, No. 26 of 2015. Counsel further contended that as the value of the suit property does not exceed Kshs. 20,000,000, the matter properly falls within the pecuniary jurisdiction of Wang’uru law courts.

The counsel argued that the Appellant opted for a forum convenient to himself, yet in terms of territorial jurisdiction, the suit ought to have been filed at Wang’uru law courts. Counsel emphasized that Sections 12 to 15 of the Civil Procedure Act contemplate that suits relating to immovable property ought to be instituted in the court nearest to the property or where the defendant resides. He urged that the appeal be dismissed with costs.

6. From the record of appeal and submissions filed, the following issues arise for the court’s determinations: -
 - a. Whether the learned trial magistrate erred in upholding the preliminary objection on the ground of territorial jurisdiction.
 - b. Who pays the costs?

7. I have carefully considered the grounds on the memorandum of appeal, record of appeal, submissions by the learned counsel, superior court decisions cited thereon, and come to the following conclusions: -

- a. This appeal arises from the ruling of Hon. G. W. Kirugumi, PM, delivered on 30th September 2022 in Kerugoya CM ELC Case No. 140 of 2019. In that ruling, the learned trial magistrate upheld a preliminary objection raised by the 4th Defendant, now the Respondent, and consequently struck out the suit with costs.
- b. The suit giving rise to this appeal was commenced in the subordinate court by the Appellant through a plaint dated 21st August 2019, which was later amended on 12th September 2019.
- c. In the amended plaint, the Appellant, suing as the legal representative of the estate of Mary Wanjiku Muchira, sought declaratory relief confirming ownership of Plot No. B3, Wang’uru; orders for the eviction of the 1st, 2nd and 4th Defendants; an award of mesne profits; police assistance during the eviction process, and costs.

The Appellant’s case was that the suit property, Plot No. B3, Wang’uru, is registered in the name of the deceased, Mary Wanjiku Muchira. He asserted that the Defendants, without colour of right or any lawful authority, trespassed onto the property, remained in unlawful occupation, and even constructed a building thereon without the requisite permissions. He contended that their continued occupation had deprived him and the estate of the use and enjoyment of the land, thereby occasioning loss and damage.

- d. The 4th Defendant, who is the Respondent in this appeal, filed a notice of preliminary objection dated 7th July 2022, raising three grounds, that the trial court lacked jurisdiction to hear and determine the suit; that the suit offended the provisions of Sections 11, 12, and 13 of the Civil Procedure Act, which govern the place of suing and territorial competence, and that on the basis of the foregoing, the suit be struck out with costs. In her ruling delivered on 30th September 2022, the learned trial magistrate noted at the outset that the Plaintiff had not filed any submissions in response to the preliminary objection.
- e. The court then reproduced Sections 12 and 15 of the Civil Procedure Act verbatim and, upon considering those provisions, found that the suit had been filed before a court lacking



territorial jurisdiction. On that basis, the learned magistrate upheld the preliminary objection and proceeded to strike out the suit with costs to the 4th Defendant.

- f. This being a first appeal, the duty of this Court is to re-evaluate the evidence afresh and draw its own conclusions, while bearing in mind that it did not see or hear the witnesses. This principle was stated in *Selle & Another versus Associated Motor Boat Co. Ltd & Others* [1968] EA 123, where the Court of Appeal held that:

“This Court is not bound necessarily to accept the findings of fact by the court below. An appeal to this Court is by way of retrial... this Court must 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 this respect.”

- g. In deciding whether the learned trial magistrate erred in upholding the preliminary objection on territorial jurisdiction, it is important to look at the provision of Section 12 of the *Civil Procedure Act*, that provides that:

Of relevance is that Section 12 of the *Civil Procedure Act* provides that:

“Subject to the pecuniary or other limitations prescribed by any law, suits—

- a. for the recovery of immovable property, with or without rent or profits;
- b. for the partition of immovable property;
- c. for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- d. for the determination of any other right to or interest in immovable property;
- e. for compensation for wrong to immovable property;
- f. for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.”

The above provision leaves no doubts that suits concerning immovable property “shall be instituted in the court within the local limits of whose jurisdiction the property is situate.”

Sections 13 to 15 of the said Act further reinforce that position, by providing inter alia that subject to specific exceptions, a suit must be filed in the court nearest to the subject property, or where the defendants reside, or where the cause of action arises.

- h. Section 12 of the *Civil Procedure Act* is couched in mandatory terms, and is intended to ensure inter alia, the orderly allocation of disputes, administrative efficiency, and avoidance of forum shopping. It also reflects the rationale that disputes over immovable property are most



suitably handled by the court locally situated near the property, which is better positioned for inspection, enforcement, and access by witnesses and litigants.

- i. In the present appeal, it is not contested that Plot No. B3, Wang’uru is located within Wang’uru Township. It is equally not in dispute that Wang’uru Township hosts properly gazetted Magistrates’ Courts vested with ELC jurisdiction under Section 9 of the [Magistrates’ Courts Act](#), and whose territorial limits encompass the suit property. Applying Section 12 strictly, the court with the territorial mandate to hear disputes relating to the suit plot is therefore the Wang’uru Magistrates’ Court.
- j. The Appellant’s argument that the Kerugoya Chief Magistrate’s Court has “territorial proximity” does not in itself confer jurisdiction. Jurisdiction is a creature of statute, and for immovable property, the determinative statutory test is the location of the land, not administrative convenience or geographical closeness. To accept that any nearby station may hear such disputes would defeat the legislative design behind Section 12 and render the statutory territorial boundaries meaningless. The provisions of Sections 1A and 1B of the [Civil Procedure Act](#), that generally provides for the objectives of the Act and duty of the court do not mean the clear provisions on the place of filing suits over immovable properties have lost their legal effect, or have become procedural provisions that a party may or may not comply with.
- k. Accordingly, the trial court correctly found that the suit was filed in a court outside its territorial jurisdiction. Once that finding was reached, the court was divested of authority to entertain the matter further, as discernible from the Court of Appeal decision in the case of Owners of the Motor Vessel “Lillian S” versus Caltex Oil (Kenya) Ltd [1989] KLR 1, where it was held inter alia that “Jurisdiction is everything. Without it, a court has no power to make one more step”.
- l. A subordinate court has no power to transfer a suit filed without jurisdiction to a court of concurrent jurisdiction, and its only lawful recourse is to strike out the suit. For these reasons, the Court finds that the learned trial magistrate did not err in upholding the preliminary objection on territorial jurisdiction, and the appeal herein has no merit and is for dismissal.
- m. Section 27 of the [Civil Procedure Act](#) chapter 21 of Laws of Kenya provides that costs shall ordinarily follow the event unless the court, for good reason, orders otherwise. The court in the case of re Estate of Monica Wanjiru Macharia (Deceased) (Family Appeal 15 of 2023) [2024] KEHC 14780 (KLR) held that:

“Section 27 of the Act is clear that it lies in the discretion of the court to award costs in a suit. This discretion must be exercised judiciously.”

In the circumstances of this appeal, the court finds no reasons to deviate from the edict in the above legal provision on costs.

8. In light of the determinations in this appeal, the court finds and orders as follows:
 - a. That the appeal has no merit and is dismissed in its entirety.
 - b. The ruling of the learned trial magistrate delivered on 30th September 2022 in Kerugoya MELC No. 140 of 2019, is confirmed.
 - c. The respondent is awarded costs in this appeal.

Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 11TH DAY OF FEBRUARY 2026.



S. M. KIBUNJA

ELC JUDGE

In the presence of:

Appellant – Mr. Ngigi for Mwangi

Respondent – M/s Kimatta

Kinyua - Court assistant.

