

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ELCA NO. E058 OF 2024

MICHAEL GITAU KURIA

APPELLANT

VERSUS

LYDIA NJOKI NJOROGE

RESPONDENT

JUDGMENT

***(Being an appeal from the judgment of Hon. F. Mutuku,
PM, delivered on 16th September 2024 in Wang'uru
MELC Case No. E020 of 2020)***

1. This appeal arises from the judgment of **Hon. F. Mutuku, PM**, delivered on **16th September 2024** in **Wang'uru MELC Case No. E020 of 2020**.

In that decision, the learned trial magistrate entered judgment in favour of the respondent, Lydia Njoki Njoroge, by ordering the revocation of the Tenant Card for **Rice Holding No. 504, Tebere Section**, measuring four (4) acres, which had been issued to the appellant, Michael Gitau Kuria, and directing that the same be registered in the respondent's name. The court also awarded the respondent costs of the suit.

2. Aggrieved by the said decision, the appellant, who was the defendant before the lower court, lodged the present appeal vide a Memorandum of Appeal dated 1st October 2024, setting out the following eleven (11) grounds:

- 1) That the learned trial magistrate erred both in law and in fact by declaring that the respondent's father did not give the appellant absolute tenancy rights over **Rice Holding No. 504, Tebere Section**, measuring four (4) acres.
- 2) That the learned trial magistrate erred both in law and in fact by disregarding the appellant's and his witness's evidence and by invoking the law of contract to determine the suit in finality, in total disregard of the circumstances leading to the acquisition, possession, and subsequent registration of the said rice holding in the appellant's name.
- 3) That the learned trial magistrate had no jurisdiction to hear and determine matters relating to occupation licences, use, and cultivation of rice holdings under the National Irrigation Authority.
- 4) That the learned trial magistrate erred in law by failing to properly direct herself on the provisions of the **National Irrigation Authority Act, 2019**.

- 5) That the learned trial magistrate erred in law by assigning herself the role of a litigant.
- 6) That the appeal raises serious issues of law and fact regarding the manner in which the trial magistrate arrived at the impugned decision.
- 7) That the decision of the trial court was flawed in every aspect.
- 8) That the trial in its entirety was a mistrial and occasioned a miscarriage of justice.
- 9) That the learned trial magistrate erred both in law and in fact by disregarding the appellant's evidence and submissions, thereby arriving at the wrong conclusion.
- 10) That the findings and judgment of the learned trial magistrate are not supported by the evidence on record.
- 11) That the learned trial magistrate erred in law by failing to appreciate that the respondent's only recourse lay in having the dispute first arbitrated upon by the National Irrigation Authority before approaching the court.

The appellant therefore prays for orders that the judgment of the learned Principal Magistrate delivered on 16th September 2024 be set aside and quashed, and that the costs of this appeal be awarded to him.

3. The dispute before the trial court was initiated by the respondent, Lydia Njoki Njoroge, through a plaint dated 30th November 2020. She sought, among other reliefs, an order for the revocation of the Tenant Card for **Rice Holding No. 504, Tebere Section**, measuring four (4) acres, which had been issued to the defendant, Michael Gitau Kuria, and for the same to be registered in her name. She also prayed for costs of the suit, interest, and such other relief as the court would deem just and equitable.

In her pleadings, the respondent contended that at all material times, her late father, Joseph Njoroge Kamau, was the duly registered tenant of the said rice holding under the National Irrigation Authority, formerly National Irrigation Board. She averred that sometime in 1997, the appellant agreed to settle an outstanding debt of **Kshs. 45,000/=** owed by her father to the Authority. In consideration thereof, the appellant was allowed to cultivate three (3) acres out of the holding for a period of three years, after which he was expected to vacate and revert possession to the respondent's family.

The respondent's case was that, contrary to the said arrangement, the appellant unlawfully retained possession of the entire holding beyond the agreed period and, without her consent, caused the tenancy for **Rice Holding No. 504**, Tebere Section to be transferred into his own name. She alleged that the said transfer was procured fraudulently and in bad faith, altering tenancy records without her consent, and effecting the transfer without authority.

4. In opposing the respondent's claim before the trial court, the appellant filed a statement of defence dated 6th January 2021, denying each and every allegation in the plaint, and in particular, dismissed the averments of fraud as baseless and intended merely to tarnish his reputation. He maintained that all the transactions leading to the transfer of the tenancy for **Rice Holding No. 504**, Tebere Section were conducted in full compliance with the National Irrigation Board Regulations. The appellant contended that the suit was res judicata, asserting that the issues raised by the respondent had been heard and determined by a court of competent jurisdiction in 2004, and that no appeal had been preferred against that earlier decision. He further averred that the present suit amounted to an abuse of the court process and a waste of judicial time, as it sought to reopen matters already conclusively adjudicated upon.

Additionally, the appellant pointed out that the National Irrigation Board, being the custodian of the records relating to rice holdings and tenant cards, was a necessary party to the proceedings but had not been enjoined, rendering the suit defective and incompetent.

5. In response, the respondent filed a Reply to Defence reiterating that the transfer of **Rice Holding No. 504, Tebere Section**, to the appellant was fraudulent and contrary to the laid-down regulations. She further denied that the suit was res judicata, asserting that no previous suit had ever been heard and determined, between the same parties by a court of competent jurisdiction. The respondent maintained that the appellant's statement of defence consisted of mere denials and did not raise any triable issues warranting the court's intervention.
6. The matter proceeded to hearing before the trial court on 12th September 2022, after which the parties were directed to file their respective written submissions.

Upon considering the pleadings, the evidence adduced, and the parties' submissions, the learned trial magistrate delivered the impugned judgment on 16th September 2024. In that decision, the trial court found that the transfer and registration of **Rice Holding No. 504, Tebere Section**, in the name of the appellant was irregular, unlawful, and tainted with fraud, as it effectively

deprived the family of the original tenant, Joseph Njoroge Kamau (deceased), of their right to succeed him upon his death.

The court further held that the deceased had not relinquished his tenancy rights over the holding during his lifetime, and that the appellant's occupation of the property was therefore in trust for the family of the deceased tenant.

7. Pursuant to the court's directions of 12th March 2025 and 9th June 2025, that the appeal be canvassed through written submissions, the learned counsel for the appellant and respondent filed their submissions dated the 22nd April 2025 and 25th June 2025 respectively, which the court has considered.
8. In his submissions, the counsel for the appellant submitted inter alia that under both the **Irrigation Act, 2019** and the repealed **Irrigation Act, Cap 347 Laws of Kenya**, disputes relating to the allocation, occupation, and succession of rice holdings and other lands within the National Irrigation Schemes are required to be determined through the dispute resolution mechanisms established under the **Act**, specifically **Sections 25 and 26 of the Irrigation Act, 2019**.

It was his argument that the dispute before the trial court revolved around the usage and occupation of **Rice Holding No. 504, Tebere Section**, and therefore the matter ought to have been referred to the **Dispute Resolution Committee of the Mwea Irrigation Scheme (Advisory Committee)**. Counsel contended that the trial court lacked jurisdiction to hear and determine the dispute and thus its judgment was rendered without jurisdiction and a nullity in law.

The counsel submitted that the respondent had admitted under cross-examination that she did not possess any written document evidencing the alleged agreement between the appellant and her late father, purportedly to the effect that the appellant would settle the **Kshs. 45,000/=** debt owed to the National Irrigation Authority in exchange for the use of three (3) acres of the rice holding for three years.

Counsel further pointed out that the respondent did not call any expert or official witness to substantiate her allegations of fraud, whereas the appellant called DW2, an Assistant Office Administrator at the National Irrigation Authority, who confirmed the legitimacy of the appellant's tenancy over the said holding. Counsel emphasized that the documents supporting the appellant's ownership of the rice holding were produced in evidence and remained unchallenged by the respondent or her counsel. He faulted

the learned trial magistrate for making a finding of trust when such an issue had not been pleaded by either party, arguing that the court thereby went outside the scope of the pleadings.

Counsel concluded by urging this Court to allow the appeal, set aside the judgment of the trial court, and award costs to the appellant.

9. The counsel for the respondent submitted inter alia that the trial court had jurisdiction to hear and determine the suit. Counsel pointed out that the issue of jurisdiction had not been raised at the earliest opportunity, noting that when the appellant filed a preliminary objection before the trial court, he failed to include the question of jurisdiction, and that objection was eventually dismissed for want of prosecution. It was therefore contended that the appellant could not properly raise the issue of jurisdiction at the appellate stage.

On whether the learned trial magistrate erred in finding that the appellant was illegally and fraudulently issued with the Tenant Card for **Rice Holding No. 504, Tebere Section**, counsel submitted that the evidence of DW2, an officer from the National Irrigation Authority, confirmed that there had never been any surrender of the rice holding by the original tenant, the respondent's late father.

Counsel further noted that the same witness was unable to explain how the appellant became the absolute licensee of the rice holding, thereby corroborating the respondent's claim that the transfer was irregular and fraudulent. Counsel maintained that the learned learned trial magistrate did not assume the role of a litigant, but rather, properly evaluated the pleadings and evidence placed before the court, and was entitled to conclude the material presented, including the finding that the transfer had been procured without the consent of the original tenant, thereby justifying the revocation of the tenancy.

In conclusion, the counsel urged this Court to find that the appeal lacks merit, uphold the judgment of the trial court, and to dismiss the appeal with costs to the respondent.

10. The following issues arises in this appeal for determinations by the court:
 - a. *Whether the trial court had jurisdiction to hear and determine the suit.*
 - b. *Whether the learned trial magistrate erred in finding that the appellant was illegally and fraudulently issued with the tenant card for **Rice Holding No. 504, Tebere Section.***
 - c. *Whether the learned trial magistrate descended into the arena of litigation and thereby acted in excess of her judicial role.*
 - d. *Who pays the costs?*

11.I have carefully considered the grounds on the memorandum of appeal, record of appeal, submissions by the learned counsel, superior court decisions relied on, and come to the following determinations:

- a. As this is 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 as follows:

“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.”

- b. On the question of whether the trial court had jurisdiction to hear and determine the suit, it is important to restate that jurisdiction is the foundation upon which any judicial proceeding rests.

Without it, a court acts in vain. This principle was emphatically stated in the case of **Owners of the Motor Vessel “Lillian S” versus Caltex Oil (Kenya) Ltd [1989] KLR 1**, where Nyarangi, JA held that;

“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...”

The Supreme Court in the case of **Samuel Kamau Macharia versus Kenya Commercial Bank Ltd & Others [2012] eKLR** reaffirmed that jurisdiction flows from the Constitution or from statute, and held that:

“A Court’s jurisdiction flows from either 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 upon it by law... Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe

the jurisdiction of such a court or tribunal by statute law.”

It is trite law that the issue of jurisdiction can be raised at any stage of the proceedings, even on appeal, and once raised, the court must address it before considering the merits of the case.

- c. Turning to the present matter, the dispute before the subordinate court revolved around **Rice Holding No. 504 Tebere Section**, specifically the revocation of a tenant card issued to the appellant and its re-registration in the respondent's name. That was the substantive order sought.

Under the **Irrigation Act, No. 14 of 2019**, Parliament established a specialized statutory mechanism for resolving disputes arising within irrigation schemes. **Section 25(1)** provides:

1) Disputes related to irrigation and drainage scheme development, management, water allocations and delivery, financing, operation and maintenance, and other matters shall be resolved within the irrigation water users association or at irrigation scheme level wherever possible.

2) Each association which is legally registered shall have a Dispute Resolution Committee that consists of at least three members selected by its governing body.

3) Decisions regarding any dispute contemplated under this section shall be made by the relevant Dispute Resolution Committee within thirty days of the hearing of the dispute in question.

Further, **Section 26** provides that:

“Where the water users association or at the irrigation scheme level is unable to resolve a dispute, the same shall be referred to the Dispute Resolution Committee at the first instance to consider and determine the matter before the same is referred to the Court.”

d. The above provisions clearly demonstrate that Parliament intended disputes relating to allocation, succession, occupation, and management of rice holdings within national irrigation schemes to be addressed primarily through the dispute resolution framework created under the **Act**. The substance of

the respondent's prayers, revocation of a tenancy card and reallocation of the holding, are matters falling within the statutory jurisdiction of the National Irrigation Authority and its Dispute Resolution Committee. The civil court is not equipped to effect or supervise such administrative reallocations.

- e. The question, however, arises whether the fact that the respondent anchored her cause of action on fraud could remove the matter from the statutory process. In my view, it could not. The mere framing of a dispute as one of fraud does not change its underlying nature or the forum prescribed by law for its determination. The essence of the dispute remained one concerning tenancy and allocation of land within an irrigation scheme, which squarely falls within the **Irrigation Act's** jurisdictional framework.
- f. Accordingly, I find that the trial court lacked jurisdiction to entertain and determine the respondent's suit. The proper forum for the redress she sought lay within the mechanisms established under **Sections 25 and 26 of the Irrigation Act, 2019**, and the learned trial magistrate erred in assuming jurisdiction over the matter.
- g. Having found that the trial court lacked jurisdiction to entertain and determine the dispute relating to **Rice**

Holding No. 504 Tebere Section, it follows that all proceedings and the resultant judgment were a nullity in law. Jurisdiction is everything, and without it, a court must down its tools the moment it becomes apparent that it does not possess the requisite authority to adjudicate the matter. The finding that the trial court was without jurisdiction in the matter is sufficient to determine this appeal, which is meritorious.

Accordingly, this Court cannot delve into the merits or demerits of the other issues, as to do so would be to perpetuate a nullity.

- h. **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 view of the fact that the issue of jurisdiction was not raised and determined during the trial, I find it fair, just and reasonable to deviate from the edict that costs follow the event and order that each party bear their own costs in this appeal and trial court.

12. In the upshot of the foregoing conclusions, the court finds and orders as follows:

- a. That the appeal has merit and is hereby allowed.**
- b. That the judgment and decree of the learned trial magistrate delivered on 16th September 2024, in Wang'uru MELC Case No. E020 of 2020, is hereby set aside and substituted with an order striking out the respondent's suit.**
- c. Each party shall bear their own costs in the appeal and trial court.**

Orders accordingly.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON
THIS 23RD DAY OF APRIL 2026.**

S. M.

Kibunja

JUDGE

In the presence of:

Appellant – Mr. Mwangi

Respondent – No appearance

Kinyua - Court Assistant.

Kibunja

JUDGE

S. M.

ELC

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