



**Mweti & another v M'Itumbiri (Civil Appeal E099 of 2024)
[2026] KEHC 5952 (KLR) (30 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 5952 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E099 OF 2024
HM NYAGA, J
APRIL 30, 2026**

BETWEEN

ROSE KAARI MWETI 1ST APPELLANT

PAUL MULIUKI 2ND APPELLANT

AND

KIMANDO M'ITUMBIRI RESPONDENT

*(Being an Appeal from the Judgement of Hon. L. Wangari Maina
(Adjudicator) delivered on 11th June, 2024 in Meru SCCC No. E107 of 2024)*

JUDGMENT

The Appeal

1. The appeal herein arises from a suit filed in the Small Claims Court, wherein the appellants are aggrieved by the Hon. Adjudicator's determination. In their memorandum of appeal dated 25th June, 2024, the appellants raised the following grounds of appeal: -
 - a. That the Learned Magistrate erred in law by handling a case that she lacked jurisdiction.
 - b. That the Learned Magistrate erred in law when she failed to properly consider and evaluate the evidence on record thus reaching erroneous decision that is not supported by law and evidence.
 - c. That the Learned Magistrate erred in law by failing to take cognizance of law of succession that agreement drawn on behalf of estate must be by legal representative.
 - d. That the Learned Magistrate erred in law by failing to consider that respondents did not have locus standi to sue or to be sued on behalf of their late mother.
 - e. That the Learned Magistrate erred misdirected herself on several matters of law.



- f. That the Learned Magistrate erred in law by reaching a decision which no reasonable person could reach given the evidence and pleadings.
 - g. That the Learned Magistrate erred in law by failing to take into account the amount claimed was given to the deceased through a lease agreement which respondent were not parties.
2. The Appellants thus seek the following orders:
- a. The Appeal be allowed with costs to them.
 - b. The Judgement delivered on 11th June, 2024 by Honourable L.W Maina Mouti Resident Magistrate to be set aside in its entirety together with all consequential orders.
 - c. This Honourable Court be pleased to determine the suit based on law and evidence on record submitted by the Appellants.
 - d. That costs and interest of this Appeal be borne by the Respondents.

Background

3. By a statement of claim dated 15th April,2024, the Respondent herein instituted proceedings in the lower court against the Appellants seeking:
- i. Judgement against the respondents (now the Appellants) jointly and severally for payment to the Claimant of Ksh.415,000/- with interest calculable from 18th December,2023 until payment in full.
 - ii. Judgement against the Respondents (now the Appellants) jointly and severally for payment to the claimant of Ksh.15,000/- with interest calculable from 9th April,2024.
 - iii. Costs of this suit.
4. The Respondent's case was that he entered into several written and unwritten agreements with the Respondents' mother one Mary Mwendwa Mwiti, over lease of Miraa growing upon the Respondents' family land which is situated at Kiolo Kaithamba Village, in Machungulu Sub-location within Igembe Central Sub-County.
5. He averred that over and above the agreements for the said lease, he advanced Mary Mwenda Mwiti money as personal debt.
6. It was his case that in all the leasing transactions, the said Mary Mwenda Mwiti involved the Appellants herein and as such they were aware of the same including the money their mother received from him.
7. That sometimes in 2023, the said Mary Mwendwa Mwiti died and since she had leased her family Miraa plantation to several people including him and had debts belonging to them, the Appellants summoned him and several others claiming from their deceased mother's estate before the Machungulu Sub-Location Assistant chief on 18th December,2023 where it was determined that the deceased owed him Ksh.265,000/- as a personal debt and a further Ksh.150,000/- being money for lease of Miraa, all totaling to Ksh.415,000/-
8. He averred that in the said meeting, the Appellants were accompanied by several of their relatives who were well versed with the Appellants' late mother transactions and it was agreed and recorded that he would be compensated Ksh.415,000/- by occupying and plucking the Miraa Plantation for the number of plucking period that would offset the said amount with each plucking period being Ksh.80,000/-



9. That it was further determined in the said meeting that the Assistant Chief from Machungulu Sub Location would oversee the implementation of the agreement on plucking of the Miraa.
10. The Respondent asserted that in breach of the aforesaid agreement, the Appellants in March 2024 threatened to forcefully and illegally deny him his right to pluck the miraa as was agreed and being apprehensive of the violence which is common in Miraa disputes, he reported the same to the Sub County Criminal Investigation officer in Maua town who summoned the Appellants on 20th March, 2024 and in the ensuing deliberation, the D.C.I explained to those present that miraa disputes are civil in nature and the police intervene when crimes are committed in relation to those disputes. That ultimately, the Appellants agreed that they would refund him Ksh.415,000/- in cash on 8.4.2024 and thereafter he would cease any claim over their family Miraa Plantation, and an agreement was recorded to that effect, executed by the Appellants and those who had accompanied them to the D.C.I offices and several D.C.I officers attested the agreement.
11. He pleaded that the Appellants did not comply with the agreement and was thus necessitated to file suit against them.
12. The Appellants entered appearance and filed a Response to the Statement of claim dated 16th May, 2024. In their response, the Appellant denied owing the Respondent any money. They pleaded that it was their late mother who entered into a lease agreement with the Respondent and that the right and obligation under contract are only coerced or imposed on the parties to that contract.
13. It was their case that the agreements the claims emanated from are the ones dated 8th February, 2020 and 31st August, 2018 between their late mother and the Respondent, and that the Respondent has tried to include them to those agreements by using the area chief and sub county investigation officer.
14. The Appellants asserted that the agreement crafted in the office of the DCIO was one sided since they were coerced into signing it by the officers and they refused to honour the agreement through inviting an advocate who questioned the intentions of the said officers handling civil matters.
15. They averred that the agreement drawn by the chief from Machungulu is invalid as they and the claimant did not sign it.
16. The Appellants pleaded that they did not have locus to defend the estate of Mary Mwendwa Mwetwa as the family have not taken letters of administration to defend the Estate as there is no estate to be administered, that the deceased's mother did not have any estate that can be sued to pay the alleged claim, that the land and miraa in contest is registered in their names and not in the name of Mary Mwendwa Mwetwa, that they have not received any money from the claimant, that the claimant plucked his miraa as agreed with the deceased and had no rights whatsoever claiming from them and that the Respondent harvested miraa 22 times from the year 2020 to 2023 which they did not wish to claim from him on behalf of the estate.
17. The matter was heard and submissions filed.
18. In its judgement, the Court held that the agreement drawn at the D.C.I office was acknowledged by all parties and the Appellants' contention that they were compelled to sign it was unsupported by concrete evidence and as such it will not interfere with the said contractual terms. The court therefore entered judgement as prayed in the statement of claim against the Appellants.

Submissions

19. The appeal was canvassed by way of written submissions. Only the Appellants filed their submissions.



Appellants' Submissions

20. The Appellants submitted that they were sued by virtue of being the children of Mary Mwendwa Mwiti whom the Respondent entered into a lease agreement with. They thus argued that the law of succession allows claim of debt by the creditor but through probate and administration proceeding in court in relation to the deceased and not in small claim court.
21. They submitted that the agreement drawn at the DCIO office was meant to coerce them to pay their deceased mother's debt without following the right procedure.
22. It was the Appellants' submissions that pursuant to Section 13(5) the trial court lacked jurisdiction to determine disputes involving leasehold and land possession. To further buttress this position, the Appellants relied on the case of Palms Resort Limited v Qureshi & 2 others [2023] KEHC 23644 (KLR)
23. The Appellants further submitted that the debt sought was acquired by their deceased's mother and not them and as such they did not have capacity to enter into agreement on behalf of their deceased's mother. They argued that all the purported agreements drawn on behalf of the estate to pay the debt acquired by the deceased without letters of administration are void.
24. The Appellants argued that the trial magistrate failed to consider the law of contract on what constitutes a valid contract, the knowledge of the law of succession when dealing with deceased's property/debt and that lease agreement does not fall under Section 12 of the Small claims Act, and therefore misdirected herself by acknowledging the content of the agreement without 2nd Appellant's signature was enough for the respondent to claim a debt acquired by their late mother.

Analysis and Determination

25. The issues for determination are: -
 - a. Whether the trial court had jurisdiction to determine the Respondent's claim.
 - b. If the answer is in the affirmative, whether the trial court erred in allowing the Respondent's claim.
26. Jurisdiction is everything and without it, a court of law must down its tools in respect of the matter before it. In the locus classicus case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR, Justice Nyarangi, JA, as he then was, posited succinctly 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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction ..."
27. The Jurisdiction of the Small Claim's Court is provided under Section 12 of the Small Claims' Act. The same provides as follows: -
 - " 12. Nature of claims and pecuniary jurisdiction (1) Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to—
 - i. a contract for sale and supply of goods or services;



- ii. a contract relating to money held and received;
 - iii. liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;
 - iv. compensation for personal injuries; and
 - v. set-off and counterclaim under any contract.
- (2) Without prejudice to the generality of subsection (1), the Court may exercise any other civil jurisdiction as may be conferred under any other written law.
 - (3) The pecuniary jurisdiction of the Court shall be limited to one million shillings.
 - (4) Without prejudice to subsection (3), the Chief Justice may determine by notice in the Gazette such other pecuniary jurisdiction of the Court as the Chief Justice thinks fit.

28. Under Section 13 of the Act, there are certain exclusions to the jurisdiction of the court. The said Section 13 provides as follows: -

13. Exclusion of jurisdiction

- (1) If a claim has been lodged with the Court, no proceedings relating to the same course of action shall be brought before any other Court except where the—
 - (a) proceedings before that other Court were commenced before the claim was lodged with the Small Claims Court; or
 - (b) claim before the other Court has been withdrawn.
- (2) A claim shall not be brought before the Court if proceedings relating to that claim are pending in or have been heard and determined by any other Court.
- (3) Subject to section 12(3), a higher court may transfer a claim to a Small Claims Court.
- (4) For the purposes of this section, a claim is deemed to have been lodged with the Court in any case where section 23 has been complied with.
- (5) A claim shall not be brought before the Court if the cause of action is founded upon defamation, libel, slander, malicious prosecution or is upon a dispute over a title to or possession of land, or employment and labour relations.

29. I have considered the submissions by the Appellants in this matter. However, I note that the Respondent's claim was not against the estate of the deceased, but against the Appellants based on a separate and independent agreements in which they are said to have undertaken to pay him Ksh 415,000/= on account of monies previously received by their deceased mother.

30. Thus, this is not a claim over title or possession of land.

31. Therefore, the trial court had jurisdiction, pursuant to Section 12(b) of the *Small Claims Court Act*, to determine the matter.



32. The respondent's case was that the Appellants' mother owed him Ksh.415, 000/- and that following meetings at the Chief's office and DCI's office, the Appellants agreed and or undertook to repay him. He produced the copies of the said agreements/undertakings in support of his case.
33. The Appellants discredited the said agreements, arguing that the first agreement at the Chief's office was not signed by the 2nd Appellant and the Respondent and that they were compelled to sign the second agreement.
34. I have perused the said agreements. The first agreement recorded at the Chief's office was indeed not signed by the 2nd Appellant and the Respondent. The trial court did not rely on it. The court based its finding on the second agreement, recorded at the DCI office and duly signed by all parties, in which the Appellants agreed to pay the Respondent the claimed sum. The police officer who drafted the second agreement told the court that that the agreement was freely executed by the parties herein.
35. The question to be answered is whether the agreement in question was freely executed.
36. The appellants had been summoned pursuant to a complaint by the respondent, meaning that that there was a possible criminal case in the pipeline against them.
37. In such circumstances, the averment that the agreement was executed freely must be taken with a pinch of salt. There was implied duress on the appellants to sign the agreement. Therefore, in my opinion, there was lack of choice or freedom of contract on the part of the appellants.
38. If the appellants really wanted to execute the agreement freely, nothing would have been easier than to refer them and the respondent to another forum, like an advocate's office.
39. In *Simon Kamau Gatuhi v Stephen Wainaina Kamonjo & another* [2017] KEELC 1648 (KLR) the court dealt with a similar case. It was held as follows;

“A look at the above agreement will show that it is a tripartite agreement with some terms. At this time, the plaintiff must have been fairly frustrated, if not agitated, that he has yet to get his land while another person seems to be in possession of part of it. Despite this, in my view, there was absolutely no reason as to why the plaintiff thought it wise to proceed to the police station to force an agreement from the defendants. The plaintiff was of course at liberty to make a formal report if he thought that there was a crime that had been committed and if that was the case, he ought to have let the police do their investigations and charge any person found to have committed any criminal offence. I would have had no problem with such an approach. But what the plaintiff did was to proceed to take advantage of a police station and police presence so as to force an agreement with the defendants. Despite the plaintiff and his witness explaining that all parties agreed to proceed to the police station so as to do an agreement, I absolutely do not buy that. Police stations are not premises where agreements for sale of land are prepared and I am not going to encourage parties to be writing agreements over land in places such as these. Police stations serve a different purpose.”
40. Looking at the sequence of events, I find that the Appellants' assertion that they were coerced into signing the agreement is plausible.
41. This court cannot enforce a contract that is not freely entered into by all the parties. If there is any form of intimidation, or duress, then that contract is void.
42. In the upshot I allow the appeal, set aside the lower court's judgment and substitute it with an order that the respondent's suit is dismissed with costs.



43. The appellants shall have the costs of this appeal.

44. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF APRIL, 2026.

HESTON M. NYAGA

JUDGE

