



**Ongoro v Sangra & 4 others (Environment and Land Appeal
E005 of 2023) [2024] KEELC 207 (KLR) (24 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 207 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL E005 OF 2023
GMA ONGONDO, J
JANUARY 24, 2024**

BETWEEN

ZAKARIA ODOYO ONGORO APPELLANT

AND

CYPRIAN ABUYA SANGRA 1ST RESPONDENT

JOSEPH OLANDO ODENDI 2ND RESPONDENT

DEPUTY COUNTY COMMANDER SUBA SUB COUNTY ... 3RD RESPONDENT

**CABINET SECRETARY, MINISTRY OF LANDS AND
SETTLEMENT 4TH RESPONDENT**

ATTORNEY GENERAL 5TH RESPONDENT

*(An appeal arising from the judgment/decree in Mbita Principal
Magistrate's Court Environment and Land case number 25
of 2020 by Hon. N. N Moseti, SRM on 14th December 2022)*

JUDGMENT

1. On 14th December 2022, the trial court (Hon. N. Moseti, SRM) rendered judgment in Mbita Senior Resident Magistrate's Court Environment and Land case number 25 of 2020 (The original suit) to the effect that the same was lodged before a wrong forum without jurisdiction. Therefore, he struck out the suit with costs to the 1st and 2nd respondents.
2. The said judgment attracted the instant appeal originated by way of a memorandum of appeal dated 14th January 2023 founded upon six grounds;
 - a. The learned trial magistrate erred in law in finding that he lacked jurisdiction to grant the reliefs sought.



- b. The learned trial magistrate erred in law and facts in holding that the suit before him was res judicata.
 - c. That the learned trial magistrate failed to address his mind to all the issues placed in the suit and hence arrived at a wrong decision.
 - d. That the learned trial magistrate failed to address his mind to the appellant's case which was unchallenged on the evidence and facts.
 - e. That the learned trial magistrate decided the case against the weight of the evidence.
 - f. That the learned trial magistrate misapprehended some facts of the case before him and hence arrived at a wrong decision.
3. So, the appellant has implored this Honourable court thus;
 - a. set aside the judgment of the lower court and substitute the same with orders as was pleaded in the plaint and
 - b. The respondents herein be condemned to pay costs of this appeal and the lower court.
 4. The appeal was heard by way of written submissions pursuant to orders of this court given on 26th September 2023.
 5. The appellant's counsel failed to file submissions in this appeal
 6. By the submissions dated 20th November 2023, M/S Agure Odera and Company Advocates, learned counsel for the respondent gave the back ground of the dispute including the Suba Kuria Land Disputes Tribunal Land Case number 9 of 1973, Land Appeal number 68 of 1973 and the matter before the trial magistrate which were directly and substantially in issue and determined. Counsel submitted, inter alia, by making reference to Section 7 of the *Civil Procedure Act* Chapter 21 Laws of Kenya, Sections 13 (7) and 26 of the *Environment and Land Court Act*, 2015 (2011) and the case of Johana Nyokwoyo Buti-vs-Walter Rasugu Omariba Civil Appeal No. 182 of 2006 by the Court of Appeal and termed the matter res judicata . Therefore, counsel prayed that the appeal be dismissed with costs.
 7. In the original suit, the appellant who was the plaintiff sued the five respondents by way of a plaint (Fast Track) dated 18th December 2017 over the land in dispute, Kamwenda Adjudication Section land parcel number 2500 for;
 - a. A declaration that the decisions dated 21st December 2016 by the 3rd defendant therein in favour of the 1st and 2nd defendants therein in respect of Land Parcel No. Kamwenda Adjudication Section No. 2500 was illegal, fraudulent and hence unenforceable in law and the same be set aside.
 - b. Costs of the suit.
 8. By the 1st and 2nd respondent's statement of defence filed in court on 21st September, 2020, the appellant's claim was denied. They stated that the court had no jurisdiction to determine matters which had been determined by the tribunal thus, implored the court to dismiss the original suit with costs.
 9. The 3rd, 4th and 5th respondents denied the appellant's claim in their statement of defence dated 23rd April 2018. They asserted that the 3rd respondent's decision should have been challenged or contested by way of Judicial Review and not the plaint. That the 5th respondent was not served in the original suit.



10. In his evidence, the appellant (PW1) relied on PExhibits 1 to 10 inclusive of proceedings in Suba Kuria Land case number 9 of 1973, Judgment in Kisii RMC Land Application number 681 of 1973, proceedings and judgment by the Minister initiated by the 1st respondent, proceedings and appeal to the Minister by the 2nd respondent (PExhibits 5, 6, 7 and 8 respectively). He stated that he was successful in the land dispute as per PExhibit 5.
11. The 1st respondent (DW1) who was the 1st defendant in the original suit relied on Exhibits 1 to 4 which include; Appeal to the Minister (PExhibit 2) and certified proceedings of Appeal (PExhibit 3). He testified that the appellant did not object to the Minister's decision which was in his (DW1) favour.
12. The trial court's finding was that the original suit was res judicata. That the same was filed in a forum devoid of jurisdiction thus, struck out the suit as stated in paragraph 1 hereinabove.
13. In the foregone, the issues for determination herein are as set out on the grounds of appeal which crystallize to whether the original suit was res judicata, the trial court lacked jurisdiction over the suit and just orders to issue herein.
14. As pertains to the first issue, paragraphs 10 and 11 of the plaint contain particulars of illegalities, mistakes and fraud against the respondents. The appellant sought a declaration regarding the decision captured in PExhibit 8 and DExhibit 2 herein.
15. The learned trial magistrate noted that the appellant was challenging a decision that had been adopted by a court of concurrent jurisdiction. That the issue in dispute was directly and indirectly in issue in the former suit and the plaintiff was a party in the former suit. That therefore, the suit was res judicata.
16. It must be noted that the term "Res Judicata" is founded upon Section 7 of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya. I bear in mind all the ingredients set out in the section.
17. Also, in Black's Law Dictionary 10th Edition at page 1504, the term "Res judicata" is defined as follows;

An issue that has been definitively settled by judicial decision. It's three essential elements are; An earlier decision on the issue, 2. A final judgment on merits and the involvement of the same parties or parties in privity with the original parties.
18. During cross examination, PW1 stated as follows;

".....I did not file a Judicial Review to quash the decision of the Minister....."
19. It is crystal clear that the Minister's decision on appeal was final as disclosed in PExhibits 7 and 8 alongside DExhibits 2 and 3 but not quashed by way of Judicial Review. Thus, the original suit was res judicata as it was determined by a court of concurrent jurisdiction as per PExhibit 6.
20. Concerning the second issue, in Halsbury's Laws of England 4th Edition Volume 9 at page 350, the term "Jurisdiction" means;

.".....the authority which the court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for decision....."



21. In the case of Samuel Kamau Macharia and another-vs-Kenya Commercial Bank Ltd & others (2012) eKLR, the Supreme Court of the Republic of Kenya observed 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....”
22. It is important to note that in Republic-vs-Karisa Chengo & 2 others (2017) KLR, the Supreme Court of the Republic of Kenya noted that;

“.....Lack of jurisdiction renders a court’s decision void as opposed to it being merely voidable.....”
23. In the case of Owners of Motor Vessel Lillian S” -vs-Caltex Oil (Kenya) Ltd (1989) KLR 1, the Court of Appeal noted;

“....Jurisdiction is everything. Without it, a court has no power to take one more step.....”
24. The learned trial court relied upon, inter alia, Lillian “S” case (supra) and opined that the original suit was lodged in a forum without jurisdiction.
25. To that end, it is the finding of this court that the original suit was res judicata. Therefore, the trial court was devoid of jurisdiction over it. Indeed, the learned trial magistrate was guided by the evidence on record and applied correct principles of law in reaching the impugned judgment. There is no reason to disturb his reasoned judgment and I proceed to affirm the same.
26. A fortiori, this appeal is devoid of merit and the same is hereby dismissed with costs to the respondent.
27. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 24TH DAY OF JANUARY 2024

G.M.A ONGONDO

JUDGE

Present;

1. Mr J. Soire learned counsel for the appellant-virtually
2. Appellant
3. 1st Respondent
4. Mutiva, court assistant

