



**Kibeleli & 3 others v Chemtai (Environment and Land Appeal
19 of 2015) [2024] KEELC 1041 (KLR) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 1041 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND APPEAL 19 OF 2015
EC CHERONO, J
FEBRUARY 29, 2024**

BETWEEN

**REUBEN KIMAI KIBELETI 1ST APPELLANT
SILAS KIBELETI 2ND APPELLANT
GEOFERY KIBELEI 3RD APPELLANT
LEWIS BOIYO KIBELEI 4TH APPELLANT**

AND

JULIUS MORKONG CHEMTAI RESPONDENT

*(Being an appeal arising from the ruling by Hon. M.A. Nanzushi (SRM)
in Kimilili ELC Case no. 9 of 2001 delivered on 27th March, 2015)*

JUDGMENT

1. This appeal arises from the ruling of the Senior Principal Magistrate Hon. M.A. Nanzushi delivered on 27th March, 2015 in Kimilili Magistrate Court SPM-ELC Case No.9 of 2015 (herein referred to as 'the former suit')
2. In the said suit, the court had issued orders authorizing the Executive Officer to sign all the relevant documents to facilitate the enforcement of an order by the trial court directing two (2) acres of the suit land be transferred in to the respondent herein. The said court order was issued on 27th March, 2015 pursuant to an application dated 29th May, 2006.
3. Vide an application dated 28th October 2015, the respondent sought to have the vesting orders issued on 27th March, 2015 implemented and a further order directing the Officer Commanding Station (OCS), Kapsokony Police station be ordered to provide security during the enforcement of those orders. In its ruling dated 3rd December 2015, the trial court allowed the said application.



4. Being aggrieved by the vesting orders issued on dated 27th March 2015, the Appellants herein preferred an appeal vide a memorandum of appeal dated 24th April, 2015 on the following grounds;
 - a. That the learned trial Magistrate erred in law and in fact when she directed the executive officer to sign transfer forms to transfer 2 acres of land registered in the names of a deceased person in the name of the respondent.
 - b. That the learned trial Magistrate erred in law and in fact in finding that land parcel no. MT.Elgon/Namoroi/206 comprised the estate that is the subject matter of a pending in succession case in the superior court and therefore her orders amounted to preempting the said pending succession cause.
 - c. That the learned trial Magistrate erred in law and in fact in issuing orders which amount to intermeddling in the estate of the deceased through a judicial process.
 - d. That the learned trial Magistrate erred in law and in fact in not finding that none of the Appellants were legal representatives of the estate of the deceased proprietor of the suit land and therefore lacked capacity to be sued in matters touching title of a deceased persons parcel of land.
 - e. That the learned trial Magistrate erred in law and in fact when she failed to use her discretion judicially and issue orders that would achieve substantial justice to the parties.
 - f. That the learned trial Magistrate erred in law and in fact delivered a decision devoid of a concise statement of the case, the points for determination, the decision thereon and the reasons for such a decision.
 - g. That the learned trial Magistrate erred in law and in fact when she failed to properly analyze the evidence adduced and the submissions filed and thereby arrived at an erroneous decision.
 - h. That the learned trial Magistrate erred in law and in finding that the appellant filed an application which was never presented thus dismissal, when there's absolutely no evidence on record of such application having been filed and/or the application having been dismissed.
 - i. That the learned trial Magistrate erred in law and in fact in finding that the appellant had filed another appeal yet the appellants had never filed any appeal in any Court.
 - j. That the learned trial Magistrate erred in law and in fact in delivering a judgment that was arbitrary a miscarriage of justice.
5. The Appellants pray that the ruling of the trial court be set aside and the Appellants appeal be allowed with costs.
6. Directions were taken to have the said appeal canvassed by way of written submission within given timelines. However, neither of the parties filed submissions at the expiry of the timelines given.
7. I have carefully considered the extract of the appeal and pleadings as compiled in the record of appeal. My mandate as the first appellate Court is to analyze and evaluate the extract of the record afresh and to reach my own independent conclusion. In doing so, I must bear in mind that I did not have the advantage of hearing and seeing the witnesses and their demeanor and giving allowance for that. That mandate was well succinctly stated in *Selle & Another v Associated Motor Boat Co. Ltd. & Others* [1968] EA 123.



8. It is also settled law that an appellate court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or on demonstrably wrong principles not supported by evidence or on wrong principles of the law. This was the finding of the Court of Appeal in *Mbogua Kiruga v Mugecha Kiruga & another* [1988] eKLR where the Court held:-

“An appeal court cannot properly substitute its own factual finding for that of a trial court unless there is no evidence to support the finding or unless the judge can be said to be plainly wrong. An appellate court has jurisdiction to review the evidence in order to determine whether the conclusion reached upon that evidence should stand but this is a jurisdiction which should be exercised with caution.”
9. By way of background, this is a matter which began when the respondent sued the appellants in the Land District Tribunal and an award was issued in his favour. He then moved to the Magistrates court to have the award adopted as a judgment of the court in Kimilili Resident Magistrate’s Court Case No. 9 OF 2001 wherein judgement was entered on the 28th March, 2001. The outcome of the judgment was that the respondent was awarded two (2) acres from land parcel no. Elgon/Namoroi/208. The respondent is alleged to have become aggrieved and preferred an appeal against the said decision in the Provisional Land tribunal but the said appeal seems not have been filed as no evidence of the same appear on the court record.
10. Following adoption of the LDT award, the respondent filed an application dated 29th May, 2006 seeking to have the executive officer sign the relevant documents to enable the transfer of the 2 acres awarded in his favour which application was allowed and is the subject of the current appeal. The appellants have all along argued that the suit property forms part of the assets of a deceased person which is subject of litigation in an ongoing succession case and thus, the same is sub-judice. However, they did not present any successful appeal from the provincial appeals committee on the adoption of the LDT’s award and neither are there any stay orders against any proceedings regarding the assets of the estate of the deceased person as alleged.
11. The trial court in allowing the application whose ruling is the subject of this appeal stated that litigation must come to an end while noting that the matter had been pending in court since 2001.
12. From the 10 grounds of appeal pleaded by the appellant in their memorandum of appeal, I note that the appellants argue that the trial court erred in allowing the application yet the suit land formed part of an estate of a deceased. The appellant further argues that the court in allowing the application is encouraging intermeddling of the estate of the deceased. The appellants further express their dissatisfaction with the trial court’s finding that they are not the legal representatives of the estate of the deceased.
13. From the extract of the record, the ruling which is the subject of this appeal is in regard to an application seeking to execute a valid order of a court. From the record, it is evident that the said order issued on 28th March, 2023 has not be set aside by way of review or appeal. The said order therefore remains an enforceable and executable order of this court. As such, It is my humble view that the respondent being the successful party had a right to enjoy the fruits of his judgment by way of execution of the same.
14. Further, the appellants in ground b, c and d seem to have misguided themselves by raising issues which are beyond the scope of the ruling they are appealing against. These grounds seem to be attacking the order adopting the award of the LDT which as I mentioned, is not the subject of this appeal. It



is important to note that the jurisdiction of a succession court and the ELC Court are separate and distinct.

15. The jurisdiction of a Probate court deals with succession matters and is limited to determining the assets of a deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribute the assets amongst the survivors and persons with beneficial interests. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries and distribution of the assets. On the other hand, the ELC court's mandate relates to the environment, the use, occupation of, and title to land. Having said that, the trial court being an ELC Court had the mandate to determine matters concerning ownership of the land in question as it did.
16. Ultimately, I find that this appeal lacks merit and I proceed to dismiss it with costs to the Respondent.
17. Orders accordingly.

DATED SIGNED AND DELIVERD AT BUNGOMA THIS 29TH DAY OF FEBRUARY, 2024.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Wekesa HB Change for respondent.
2. Appellants/advocate absent
3. Bett C/A – present.

