



**Kingari & 3 others v Munene (Environment and Land Appeal
1 of 2022) [2024] KEELC 838 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 838 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND APPEAL 1 OF 2022**

JM MUTUNGI, J

FEBRUARY 22, 2024

BETWEEN

**MARY WANGUI KINGARI 1ST APPELLANT
JOHN NJUGUNA GITONGA 2ND APPELLANT
ESTHER NJERI KIRO 3RD APPELLANT
BEATRICE WANJIRA KAMAU 4TH APPELLANT**

AND

ANNAH WANJIRA MUNENE RESPONDENT

*(Being an Appeal from the Ruling of the Honourable P. M. Mugure- Principal
Magistrate sitting at the Principal Magistrate's Court at Wang'uru Law
Courts delivered on 24th January, 2022 in Wang'uru PMCC No. 14 of 2014)*

JUDGMENT

1. The instant appeal is against the Ruling by Hon. PM Mugure, PM Delivered on 24th January 2022 in Wang'uru PMCC No. 14 of 2014 reinstating the suit by the Respondent (Plaintiff before the Lower Court) that had been dismissed for want of prosecution. The Respondents being aggrieved and dissatisfied with the Ruling have preferred the instant appeal citing eight grounds of appeal as here under:-

1. That the Learned Trial Magistrate erred in law by failing to appreciate the matter had been finalized.
2. That the Learned Trial Magistrate erred in Law by failing to appreciate that the Honourable Court had no inherent jurisdiction to hear and matters relating to Rice Holdings.



3. That the Learned Trial Magistrate erred in Law by failing to correctly direct herself on the Provisions of the National *Irrigation Act*, Cap 347 Laws of Kenya.
 4. That the Learned Trial Magistrate erred in Law by openly being biased against the Appellant and the Appellants.
 5. That the Learned Trial Magistrate erred in Law by failing to appreciate that by making its pronouncement of 2nd day of June 2015 it automatically transferred the matter from its jurisdiction.
 6. That the Learned Trial Magistrate erred in Law by failing to appreciate that the application for reinstatement of suit was fatally defective as the Respondent had not complied with the provisions of Order 9 Rule 8 and Order 45 Rule 1 of the *Civil Procedure Rules*.
 7. That the Learned Trial Magistrate erred in Law by assigning herself the role of a litigant.
 8. That the Learned Trial Magistrate erred in Law by failing to appreciate that the only recourse for the Respondent (Applicant) was to challenge by way of Judicial Review the findings of the Advisory Committee of the National Irrigation Board in its sittings of 22nd day of June 2016 and 5th day of March 2020.
2. The background to the appeal is that the Respondent instituted a suit by way of a Complaint dated 20th February 2014 before the Principal Magistrate's Court at Wang'uru praying for the following orders:-
- a. A declaration that the Plaintiff is the lawful tenant of Rice Holding No. 1462 Unit M.17 Mwea Section comprising 2 acres.
 - b. A permanent injunction against the Defendants restraining them through themselves, their servants, agents, employees or anyone acting through them from interfering with the Plaintiffs' quiet possession, occupation, cultivation and enjoyment of rice holding No. 1462 Unit M. 17 Mwea Section comprising of 2 Acres.
 - c. Cost and interest at Court rate.
 - d. Any other relief the Honourable Court may deem fit to grant.
3. The Respondent's application to injunct the Appellants from utilizing the portion of the said property that they had taken possession of was declined by the Court on 18th September 2014 but the Court barred the Appellant from disposing off the Rice Holding No. 1462 Unit M. 17 until the suit was heard and determined. The parties on 2/7/2015 by consent agreed to have the matter referred to the Scheme Managers Mwea to arbitrate over the Rice Holding and to file a report in Court. On 13th July 2015 the consent order was extracted in the following terms:-

It is hereby ordered by consent

1. That this matter be and is hereby referred to the Scheme Manager Mwea/ Irrigation Settlement Scheme and Advisory Committee to arbitrate over Riceholding No. 1462 M 17 Mwea Section which is the subject matter of this suit.
2. That upon conclusion of the arbitration, the Manager shall file report in this Court for further orders/directions.



4. After the order of reference for arbitration of the matter by the NIB, the matter apparently went to sleep until the Court *Suo Moto* issued a notice to show cause for dismissal of the suit under Order 17 Rule (2)(1) of the *Civil Procedure Rules* for hearing on 22/11/2018. On the date none of the parties attended to show cause and the Court proceeded to order the suit dismissed for want of prosecution.
5. The Respondent on 26/5/2021 filed a Notice of Motion dated on the same date where she prayed inter alia for the following orders:-
 1. Spent
 2. That this Honourable Court be pleased to set aside orders entered on 22nd November 2018 by Hon. D.N, Sure (SRM) dismissing the suit for want of prosecution.
 3. That this Honourable court be pleased to reinstate the Plaintiff's suit before this Honourable Court and the same be heard on merits.
 4. That all interlocutory orders be reinstated and the OCS Kiamiciri Police Station to ensure compliance.
 5. That the cost of the application be in the cause.
6. In support of the application the Respondent averred her Advocates never received the Notice to Show Cause why the suit should not be dismissed for want of prosecution. She stated she was ready and willing to prosecute the suit and that the order of reference of the matter to NIB for arbitration of the matter had not been complied with. That she only realized the suit had been dismissed when she visited the Court to find out whether the NIB had filed the report as directed by the Court.
7. The Appellants filed grounds of opposition dated 2nd June 2021 to the Respondent's application dated 26th May 2021. They averred the application was bad in law and an abuse of the Court process. The Appellants contend the application offended the provisions of Order 9 Rule 5 of the Civil Procedure Rules. The Respondent having filed the same in person whilst she had an Advocate on record.
8. The 3rd, 4th and 5th Appellants/Respondents filed a joint Affidavit explaining the NIB carried out the arbitration as ordered by the Court and made an award. The Appellants annexed the copy of the minutes incorporating the verdict reached by the NIB.
9. The Respondent on 20th September 2021 filed a Notice of withdrawal dated the same date seeking to wholly withdraw the application dated 26th May 2021 against the Appellants/Respondents with no order as to costs. On 4th November 2021, the Respondent filed the Notice of Motion of application seeking inter alia the following substantive orders:-
 1. Spent
 2. That this Honourable Court be pleased to set aside order dated 22nd November 2018 by Hon. D. N. Sure (SRM) dismissing the suit for want of prosecution and to reinstate the Plaintiff's suit before this Honourable Court and the same be heard on merit.
 3. That this Honourable Court be pleased to strike out the 1st Defendant Antony Munene Kariuki now deceased from the suit.
 4. That all interim orders issued on 18th September 2014 by Hon. S. Ngii be reinstated and National Irrigation Board and or Authority ensure compliance.
 5. That the costs be in the cause.



10. The application was supported on the Supporting Affidavit sworn by the Respondent in support of the application on 3rd November 2021. The Respondent in support of the application basically reiterated the grounds she had raised in support of the application dated 26th May 2021 the she withdrew.
11. The Appellants filed grounds of opposition dated 13th November 2021 and a Replying Affidavit sworn in opposition by Beatrice Wanjiru Kamau on the same date. It was their position that the matter had pursuant to the consent made on 2/7/2015 referring the matter to NIB for arbitration been concluded as the NIB had finalized the matter and had rendered a verdict which the Respondent had not challenged.
12. The application before the Learned Trial Magistrate was canvassed by way of written submissions. The Magistrate apparently after reviewing the evidence and submissions allowed the application and reinstated the suit to be heard on its merits. That decision provoked the present appeal.
13. The appeal was canvassed by way of written submissions. The Appellants submissions dated 26th May 2023 were filed on 6th June 2023 while those of the Respondent dated 30th June 2023 were filed on 10th July 2023. I have as I am obligated to do on this first appeal reconsidered the evidence and material presented before the learned Trial Magistrate to ascertain whether the decision she reached was justified. I am conscious that I am not bound by the findings of fact by the Lower Court and that I can make my own independent findings and my own conclusions upon the reevaluation of the evidence presented before the Court. See the Case of *Selle & Another v East African Motor Boat Co. Ltd & Others* (1968) EA 123.
14. The Appellants in their appeal have challenged the jurisdiction of the Lower Court to handle the matter in view of the provisions of the *Irrigation Act*, Cap 347 Laws of Kenya (repealed and now the *National Irrigation Act*, 2019). Under the current *Irrigation Act* of 2019 and the repealed *Irrigation Act*, Cap 347 Laws of Kenya all disputes relating to allocation, occupation and succession of Riceholding within the National Irrigation Schemes are supposed to be handled under the Dispute Resolution Mechanisms established under the *Act*. Sections 25 and 26 of the *Irrigation Act*, 2019 provide for Dispute Resolution in the following terms:-
 25.
 - (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.
 26. 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 Court.
15. Thus where a dispute involves allocation, management and use of a Riceholding it is the Dispute Resolution Committee that has mandate under the Act and the Regulations made thereunder to deal with the dispute in the first instance. In the matter before the Lower Court the parties infact



appreciated this fact, and on that basis they entered a consent to refer the dispute for arbitration by the National Irrigation Board (NIB). It is necessary to note that the National Irrigation Board (NIB) now the National Irrigation Authority (NIA) under the new Act has full mandate to administer all land that falls under the National Irrigation Schemes and Mwea Irrigation Scheme is one such scheme. They are vested with the authority to adjudicate all disputes arising from the allocation, management and use of the land falling within their mandate before such disputes come to Court either as appeals and/or review of their administrative decisions. The National Irrigation Authority/Board issues licences in form of rent cards for the allotments they make and deal with any succession issues relating to the Riceholdings. Hence in matters relating to disputes affecting Riceholdings, the Courts have no original jurisdiction as such jurisdiction is vested on the NIB(now NIA).

16. The Lower Court in the first instance lacked the jurisdiction to deal with the suit that was filed before it. The suit sought a declaration of ownership of a Riceholding and that clearly was a mandate that fell within the Irrigation Scheme Dispute Resolution Committee to determine.
17. Although the fate of this appeal is obvious having made a finding that the Lower Court acted without jurisdiction in the matter, I nonetheless I am of the view the exercise of discretion to reinstate the suit by the Learned Trial Magistrate was not judicious.
18. The Respondent affirmed that the dispute was by consent of the parties referred to arbitration by NIA on 2nd July 2015. It was not in dispute that indeed the parties appeared before the NIB Dispute Resolution Committee and the dispute was heard and a verdict made on 22nd June 2016. The Respondent in her further Affidavit dated 13/8/2021 annexed the extract of the minutes of the Arbitration meeting held at NIB on the said date at which the Respondent was present and participated. As per the verdict the Respondent was entitled to a portion of 0.86 Acres and not the 2 Acres she claims.
19. The NIB complied with the order of reference to arbitrate the dispute and the Respondent was accorded the opportunity of being heard. From the record it does appear that the initial arbitration was on 20th August 2015 and that indeed the advisory committee meeting of 22nd June 2016 was by way of Appeal by the Respondent as can be deduced from the verdict which was in following terms:-

Verdict

The Committee ruled that the status quo for the holding, to remain as per the arbitration given on 20th August 2015 since Antony had already surrendered his holding, ie

Ann Wanjira Munen to hold 0.86 Acres

Beatrice Njugu Kimani to hold 0.25 acres.

Esther Njeri Gitau to hold 0.35 Acres.

Moses Kingari to hold 0.35 Acres.

John Njuguna Gatonga to hold 0.35 Acres.

20. The Respondent without a doubt participated in the arbitration way back in August 2015 and was heard on appeal by NIB which upheld the verdict issued on 20th August 2015. The Respondent was aware of the decision. No reason was given why the Respondent did not return to Court from 2/7/2015 when the order of reference to NIA for arbitration was given until 3rd November 2021 when the Respondent filed the application to reinstate the suit that was dismissed for want of prosecution on 22/11/2018. The Respondent waited for nearly another 3 years before making the application for the reinstatement of the suit. The Respondent was aware that the NIB had determined the dispute



and had in accordance with their mandate effected the farmer's changes in their records. The option the Respondent had if she was dissatisfied with the verdict of the NIB was to apply for Judicial Review of the decision of the NIB.

21. Having carefully considered the matter it is my view the Learned Trial Magistrate did not exercise her discretion rightly to reinstate the suit considering that no reasonable explanation was given by the Respondent as to why the matter before the Lower Court went to sleep for over a period of 3 years before it was dismissed by the Court yet the NIB had already complied with the order of reference and carried out the arbitration. The Respondent in my view is desirous of having a rehearing of the matter. The matter was heard before the NIB and the Respondent could only have challenged the award that they rendered. As observed earlier in the Judgment, the Lower Court was without jurisdiction and the suit was wrongfully instituted before the Court in the first place.
22. The upshot is that I hold the appeal has merit. I allow the same and hereby set aside the Ruling of the Learned Trial Magistrate delivered on 24th January 2022. I order that each party bears their own costs of the appeal and of the Court below.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH VIDEO LINK THIS
22ND DAY OF FEBRUARY 2024.**

J. M. MUTUNGI

ELC JUDGE

