



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njagi v Thaara (Civil Appeal E126 of 2022)  
[2025] KECA 367 (KLR) (21 February 2025) (Judgment)**

Neutral citation: [2025] KECA 367 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL E126 OF 2022  
W KARANJA, J MOHAMMED & AO MUCHELULE, JJA  
FEBRUARY 21, 2025**

**BETWEEN**

**BENSON NJAGI ..... APPELLANT**

**AND**

**WILSON MIRITI THAARA ..... RESPONDENT**

*(Being an appeal against the judgment of the Environment and Land Court at Meru (C.K. Nzili, J.) dated 15th December, 2021 in ELC Appeal No. 14 of 2020)*

**JUDGMENT**

**Background**

1. This is a 2<sup>nd</sup> appeal. Benson Njagi (the appellant) was aggrieved by the judgment of the Environment and Land Court (ELC) (C.K. Nzili, J.) delivered on 15<sup>th</sup> December 2021 in Meru ELC Appeal No. 14 of 2022 dismissing his appeal with costs. Through a memorandum of appeal dated 17<sup>th</sup> October 2022, the appellant seeks for this Court to allow his appeal with costs.

Wilson Miriti Thara is the respondent herein.

2. A brief background will help place the appeal in context. By a plaint dated 5<sup>th</sup> October 2018, the respondent sued the appellant before the Chief Magistrate's Court in CMCC No. 420 of 2010 claiming that he was the registered owner of land parcel No. 1389 measuring approximately 60 acres and that the appellant was the registered owner of parcel of land No. 1985 measuring approximately 4.70 acres. That both parcels of land were situated within the Akaiga Adjudication Section. The respondent further averred that the appellant unlawfully ignored the beacons laid between the two parcels of land, trespassed on his land and ordered him to stop cultivating on parcel No. 1389. The respondent thus sought an injunction restraining the appellant, his servants, agents and family members and anyone working at his behest from interfering with the enjoyment of his land No. 1389.



3. The appellant, in his defence stated that his parcel No. 1985 measured 4 acres and that he had been in complete occupation of the said land.

That the respondent's parcel of land No. 1389 was fraudulently allocated within the appellant's land No. 1985 during the demarcation and adjudication exercise. That the respondent in collusion with some land officers and committee members secretly and fraudulently excised and removed 2.5 acres from his land and gave it to the respondent as part of parcel No. 1389.

4. The appellant filed a counterclaim against the respondent's claim alleging fraud on the part of the respondent and the land committee in excising part of his land and moving parcel no. 1389 onto his land no. 1895 thus taking away 2.5 acres from his land. The appellant prayed for an order that 2.5 acres be excised from the land parcel No. 1389 and be included in parcel No. 1985.
5. The trial court framed the issues for determination as: whether the respondent was entitled to the injunction sought; and whether the appellant had proved fraud to warrant the issuance of an order that 2.5 acres of land be excised from parcel no. 1389 and be included in parcel No. 1985. Consequently, the trial court found that the issues raised by the appellant revolved around the demarcation and adjudication process. That Section 26 of the *Land Adjudication Act* provided an elaborate procedure for challenging an adjudication register, which the appellant ought to have followed with a view to having his alleged dispute resolved. As such the trial court found no merit in the appellant's counterclaim and the same was dismissed. The respondent's suit was allowed as prayed.
6. Dissatisfied with this decision, the appellant filed his 1<sup>st</sup> appeal before the ELC on grounds that there was no sufficient evidence to support the trial court's judgment to the required standard; misapplication of the intention of the *Land Consolidation Act* and its purpose; and for failing to find that the respondent was a total stranger who obtained the land fraudulently in the year 2010.
7. In determining the appeal, the ELC considered whether the trial court misconstrued the facts, the evidence and the law and reached a wrong decision. The ELC observed that the power to ascertain and demarcate trust land under the *Land Adjudication Act* and the *Land Consolidation Act* is donated to the Land Adjudication Officer and the Adjudication Committee respectively. That the court's power is supervisory in nature and does not include excising and reversal of adjudication portions as prayed by the appellant in the counterclaim.
8. The ELC upheld the provisions of Section 26 of the *Land Adjudication Act* that any person aggrieved by the allocation of land as entered in the adjudication register ought to raise an objection to the Adjudication Officer for consideration. The ELC, while relying on the decision of *Stephen Kirimi M'Rintari v Land Adjudication & Settlement Officer Igembe District & 3 Others* [2020] eKLR, held that:

“The court cannot usurp the powers of (*sic*) land adjudication committee and the land adjudication officer. The court can only play a supervisory role to ensure that the process is carried out within the law. The court can only interpret and determine any point or issue of law that may arise in the course of the adjudication process.”

9. Consequently, the ELC dismissed the appeal for lack of merit.

Undeterred, the appellant preferred the 2<sup>nd</sup> appeal before this Court and raised 4 grounds of appeal contending that the ELC erred in law and fact:

- i. in the manner it analyzed and evaluated the evidence on record and therefore misdirecting itself arriving at a wrong decision;



- ii. in failing to appreciate that the appellant had valid grounds of appeal and entered a wrong decision;
- iii. as no umpire properly exercising its mind to the law would have arrived at the said decision; and
- iv. in that the decision of the ELC is against the weight of evidence tendered and the law.

### Submissions by Counsel

10. The appeal was disposed of by way of written submissions with brief oral highlights. Through the firm of Messrs Muia Mwanzia & Co Advocates, the appellant submitted that the evidence on record before the ELC was sufficient for the court to return a finding in favour of the appellant. Counsel asserted that the evidence showed that the appellant was farming on land parcel no 1985 while the respondent was allocated land parcel no. 1389 in 2010. Counsel submitted that before then the respondent did not own land parcel no 1389. Further, that it was the demarcation officer who showed the appellant his parcel of land.
11. Counsel further submitted that the register of existing rights showed that the appellant's parcel of land was 6.2 acres but what was demarcated on the ground was 4.7 acres. That the appellant was on land parcel no 1985 since 1974 before the respondent came in the year 2010. That had the ELC properly analyzed the evidence, it would have found that the record of existing rights gave credence to the appellant's testimony and his counterclaim on the particulars of fraud.
12. Counsel for the appellant relied on the provisions of Section 20 of the *Land Adjudication Act* on the finality of the record of existing rights. Counsel submitted that it is the said record that guides the adjudication process. Further, that the demarcation officer disregarded the record of existing rights and demarcated to the appellant land, which was of less acreage, a fact that the ELC failed to appreciate. That had the ELC properly exercised its mind to the facts of the case, it would have returned a finding that the integrity of an adjudication process was compromised and since there was consent to entertain the case in court, the ELC should have risen to the occasion and found for the appellant.
13. Counsel further submitted that courts must interfere where the record of existing rights in the adjudication exercise has been disregarded. He cited the case of *Republic v Director of land adjudication & another ex-parte Stanely Mbiuki* [2015] eKLR in support of the proposition that where the court held that the recording of existing rights was final, and if there was no objection, the same should not be altered. Counsel also relied on the decision of *Peter Kimandiu v land Adjudication Officer Tigania West District & 4 others* [2018] eKLR where this Court emphasized the record of existing rights as a permanent register.
14. In rebuttal to the appellant's submissions, the respondent, through the firm of Messrs Gichune Muthuri & Co Advocates submitted that the respondent is the registered owner of parcel of land No. 1389. That the appellant has never disputed the respondent's ownership of the said land. That the appellant's claim is that a portion of his land was hived off and given to the respondent. Further, that the demarcating officer in charge of the area testified during trial that it was within the law to move a person to a new location and those who occupied more land than they were entitled to were bound to lose some land to new owners. Counsel asserted that the appellant's claim was based on the alleged fraud of 2.5 acres which he allegedly previously occupied and which was demarcated to the respondent. Counsel further asserted that he did not sue the Land Adjudication Officer as the respondent had no capacity to excise and transfer land to himself.
15. Counsel further submitted that the *Land Consolidation Act* provides for a procedure for raising objection where a person considers the record to be inaccurate or incomplete. That the appellant did



not file any objection. It was counsel's further submission that the appellant's parcel of land was to be subjected to a percentage cut to be given to other people in the consolidation process. Counsel asserted that the said deduction was not fraudulent and neither was the demarcation to other people.

16. Counsel relied on the authority of *Tobias Achola Osindi & 13 others v Cyprianus Otiemo Ogalo & 6 others* [2013] in support of the proposition that the court's powers are supervisory in nature and do not include excising and reversal of adjudicated portions. Counsel asserted that the court can only interpret and determine any point or issue of law that may arise in the adjudication process.
17. Counsel urged this Court to find for the respondent and that the instant appeal be struck out with costs to the respondent.

### Determination

18. As a second appeal, our mandate, is as pronounced in a myriad of case law of this Court. See *Maina v. Mugiria* [1983] KLR 78, *Stanley N. Muriithi & Another v. Bernard Munene Ithiga* [2016] eKLR where it was held that, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.
19. We have considered the record, the submissions by counsel, the authorities cited and the applicable law. Since a second appeal is limited to matters of law, the issue that warrants determination in this appeal is whether the ELC properly applied the relevant laws in the circumstances of the case.
20. From the pleadings filed, the appellant's claim was that 2.5 acres of his parcel of land was illegally and fraudulently allocated to the respondent as part of parcel No. 1389 during the land adjudication process. As a consequence, the appellant sought that the same revert to his parcel of land no. 1985. The respondent's position was that he was allocated the land during the adjudication process and that if at all the appellant was aggrieved by the demarcation process, he ought to have followed the due process of law as stipulated in the *Land Adjudication Act* and *Land Consolidation Act* and raise objection to the adjudication officer.
21. From the record, we discern that the applicable laws relating to the dispute are the *Land Adjudication Act* and the *Land Consolidation Act*. Section 9 of the *Land Adjudication Act* vests responsibility upon adjudication officer to supervise and control the adjudication process. The adjudication officer is also mandated to hear and determine any petition respecting any act done, omission made or decision given by a survey officer, demarcation officer or recording officer and any objection to the adjudication register submitted in accordance with Section 26 of the *Land Adjudication Act*. The ELC observed that from the record, it was not clear if the appellant lodged a complaint with the adjudication officer in line with Section 26 of the *Land Adjudication Act*.
22. The appellant's submission was that the register of existing rights showed that his land (land parcel no 1985) was 6.2 acres but what was demarcated on the ground was 4.7 acres. In the circumstances, we note that the appellant's claim arose from the demarcation and fixing of the boundary where his 2 acres or thereabout were allegedly lost. Pursuant to the provision of Section 9 of the *Land Adjudication Act*, the appellant ought to have petitioned the adjudication officer for determination of the said claim.
23. Section 9 of the *Land Adjudication Act* provides as follows:

“The adjudication officer shall be in charge of and shall exercise general supervision and control over the adjudication.(2)The adjudication officer shall hear and determine—



- (a) any petition respecting any act done, omission made or decision given by a survey officer, demarcation officer or recording officer; and
- (b) any objection to the adjudication register which is submitted in accordance with section 26 of this Act.”

24. The appellant’s claim fell within the special jurisdiction of the adjudication officer as provided under the Land Adjudication Act. We find that the appellant has not demonstrated that he followed the elaborate procedure for resolving disputes under the Land Adjudication Act or the Land Consolidation Act to lodge a complaint with the adjudication officer.

25. This Court in Amarnath (Suing on Behalf of the Estate of the Late Amarnath Gupta) v Kazungu & 2 others (Civil Appeal E033 of 2021) [2023] KECA 1280 (KLR) (27 October 2023) (Judgment) stated in part as follows:

“The ELC commenting on the role of the Court vis-a-vis that of the adjudicating bodies under [the Land Adjudication Act] (the Act) in the persuasive authority of Tobias Achola Osindi & 13 Others v. Cyprian Otieno Ogalo & 6 Others [2013] eKLR by Okongo J., stated in part as follows:

“The whole process leading up to the registration of land as aforesaid is undertaken by the Adjudication Officer together with other officers appointed under the Act for that purpose. It follows from the foregoing that once an area has been declared an adjudication area under the Act, the ascertainment and determination of rights and interests in land within the area is reserved by the law for the officers and quasi-judicial bodies set up under the Act...The Act has given full power and authority to the Land Adjudication Officer to ascertain and determine interests in land in an adjudication area prior to the registration of such interest. As I have mentioned above, the process is elaborate. It is also inclusive in that it involves the residents of the area concerned. I am fully in agreement with the submission by the advocates for the defendants that the Land Adjudication Officer cannot transfer the exercise of this power to the court.

The court has no jurisdiction to ascertain and determine interests in land in an adjudication area. In my view, the role of the court is supposed to be supervisory only of the adjudication process. The court can come in to ensure that the process is being carried out in accordance with the law. The court can also interpret and determine any point or issue of law that may arise in the course of the adjudication process. The court cannot, however, usurp the functions and powers of the Land Adjudication Officer or other bodies set up under the Act to assist in the process of ascertainment of the said rights and interests in land...”

26. We find that the ELC did not err in finding that the power to ascertain and demarcate trust land under the Land Adjudication Act and the Land Consolidation Act is donated to the land adjudication officer and the land adjudication committee respectively. The court’s powers are merely supervisory in nature and do not include the excising and reversal of adjudicated portions as sought by the appellant. In the circumstances, we therefore find no fault in the decision of the ELC.

27. The upshot is that the appeal lacks merit and it is hereby dismissed with costs to the respondent.

**DATED AND DELIVERED AT NYERI THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2025.**



**W. KARANJA**

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**JUDGE OF APPEAL**

**JAMILA MOHAMMED**

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**JUDGE OF APPEAL**

**A. O. MUCHELULE**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

*signed*

**DEPUTY REGISTRAR**

