



**Nthiiri & 16 others v Muchungu & 12 others (Civil Appeal
210 of 2019) [2025] KECA 559 (KLR) (21 March 2025) (Judgment)**

Neutral citation: [2025] KECA 559 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 210 OF 2019
W KARANJA, J MOHAMMED & LK KIMARU, JJA
MARCH 21, 2025**

BETWEEN

HERBERT NTHIIRI & 16 OTHERS APPELLANT

AND

NTHUMBI MUCHUNGU & 12 OTHERS RESPONDENT

*(Being an appeal from judgment of the Environment and Land Court
(Y.A Angima J.) dated 5th April 2018 in ELC Case No. 224 of 2015)*

JUDGMENT

Background

1. The appeal relates to land reference No. Mbeti/Gachuriri/172 (the suit property). The appellants, Herbat Nthiiri and 16 others, were aggrieved by the judgment of the Environment and Land Court (ELC) (Y.A. Angima J.) delivered on 5th April 2018 in ELC Case No. 224 of 2015 in favour of the respondents, Nthumbi Muchungu & 12 others whereby it was held that the registration of Gekara Group Ranch as proprietor of the suit property was fraudulent and that all sub-divisions and transfers of the suit property to the appellants were null and void.
2. The appellants, in their memorandum of appeal seek an order dismissing the respondents' suit in ELC Case No. 224 of 2015 and reinstatement of the title in respect of the suit property to them together with all the resultant subdivisions.
3. The suit before the ELC was a consolidation of suit Nos. Embu HCCC 87 of 1997, HCCC 196 of 1997 and HCCC 867 of 1997. The background of the appeal is that the respondents moved the High Court at Embu seeking a declaration and order that the registration of Gekara Group Ranch as the owners of the suit property was fraudulent; an order that the respondents are entitled to a share of the suit property; an order that the trustees of the Group Ranch are trustees of Gekara clan and not Gekara Group Ranch; and an order of rectification of the register.



4. The appellants' contention was that the suit property was originally owned by Gekara clan but was later registered under Gekara Group Ranch. That the suit property was contributed to Ngaru 5 ranching scheme (a co-operative society) and after dissolution of the said scheme, the Gekara clan got back its land for distribution among its members but it was registered in the names of the 1st to 5th appellants as trustees of Gekara group Ranch. That the suit property was then fraudulently subdivided and transferred to the appellants. That the 1st appellant was the Chairman of the Gekara clan who forwarded names of his relatives to be registered as trustees of the group ranch.
5. The appellants denied the respondents' claim particularly that they were representatives of Gekara clan or that Gekara clan ever owned the suit property and that the respondents had any interest in the suit property. According to the appellants, the suit property was owned by Gekara group ranch, registered under the Land (Group Representatives) Act, 1968.
6. In determining the matter, the main issues discerned by the ELC were whether the suit property belonged to Gekara clan or Gekara Group Ranch and whether the respondents were entitled to the reliefs sought in their pleadings. The ELC noted that when the Ngaru 5 ranching scheme (the co-operative society) was dissolved, Gekara clan got back its land (the suit property) for distribution among its members but the suit property was registered in the name of Gekara group ranch, owned by a few members of Gekara clan.
7. The ELC found in part as follows:

“In my assessment of the evidence on record, there is no indication that Gekara Group Ranch was a group which complied with the provisions of Section 5 of the Act under which it was registered. There was no indication that the registrar or his representative ever presided over the election of its disputed representatives as required by law. There is also no indication that the said group met the description or characteristics of a group within the meaning of section 2 of the *Land Adjudication Act*. The membership of the group consisted mainly of the close relatives of the clan chairman and some purchasers. There is not indication on record that they were entitled to the suit property under any customary law and that they acquired the land through an adjudication process under the *Land Adjudication Act*...The material on record, including proceedings of the Land Adjudication Committee indicates that the suit property was clan land.”
8. Conclusively, the ELC entered judgment in favour of the respondents in the following terms:
 - a. A declaration is hereby issued that the registration of Gekara Group Ranch as proprietor of title No. Mbeti/Gichuriri/172 was fraudulent and that all sub- divisions and transfers of the suit property to the defendants was null and void.
 - b. The plaintiffs are hereby awarded costs of the suit
 - c. All other reliefs sought are declined.
9. Dissatisfied by the said judgment, the appellants filed the appeal raising 25 grounds of appeal that the ELC erred in law and fact by:
 - i. Failing to appreciate that ELC 224 of 2015 was consolidation of Embu HCCC No. 50 of 2001; HCC 867 OF 1997, HCCC No. 87 of 1997 hence any and all pleadings in any of the above consolidated cases should have been admitted and availed for the Environment and Land Court's (ELC) consideration and record. The Court erred in proceeding with the hearing



without prior ascertainment that all the pleadings and documentary evidence was available for all consolidated cases.

- ii. Due to internal procedural failure of the Court to present all consolidated files, the Environmental and Land Court overlooked and made erroneous conclusions.
- iii. Stating it had referred to pleadings, documents and statement on record yet ignored all such documents by Appellants while exclusively referring to Respondent's evidence.
- iv. Exceeding its jurisdiction by finding that the Appellants and by extension the [Land Adjudication Act](#), the Land (Group Representative) Act 1968 and the [Land Registration Act](#) had been breached by the Appellants, without any evidence to support that conclusion and contrary to Appellants' evidence emanating from the Registrar of Land (Group Representatives) the Chief Land Registrar and Appellants' other evidence.
- v. The ELC exceeded its jurisdiction in ordering that a fresh Land Adjudication process commence while the adjudication process had been finalized in 1987 which decision was contrary to all statutory and equitable laws.
- vi. The ELC casually dismissed or excluded the Appellants documentary evidence on the Registry of Members of Gekara Group Ranch, Certificate of Dissolution by the Director of Land Adjudication, the Certificate of Incorporation for Gekara Group Ranch and the Chief Land Registrar's directions on Appellants' land all which were produced as Exhibits 3 to 13 at the hearing yet the ELC ruled that Appellants tendered no evidence.
- vii. The Learned Judge had to borrow Defendants' copy of the Defendants List of Documents availed by Defendants' Counsel instead of requesting that all consolidated files to be brought into Court for reference and unjustly disregarded Defendants evidence in totality.
- viii. Despite Defendants in their submission pointing out the consolidation of the aforesaid Court files, the Environmental and Land Court (hereinafter referred to as "ELC") ignored all previous proceedings and records and ruled that Defendants had not filed any documents or presented any evidence which flew against the facts, equity and justice to the prejudice of the Appellants.
- ix. The ELC acted in error and prejudice against the Appellants in favour of the Respondents in finding that the Appellants had not presented any evidence, yet these were exhibits 1-13 produced by the Appellants' witness.
- x. The Learned Judge erred in admitting evidence attached to Plaintiffs advocates submissions and contravened Section 19 (2) of the [Environment and Land Court Act](#) 2011 by ignoring the principles of natural justice in depriving the Appellant the right to cross examine the Respondent's evidence, present counter evidence or even ascertain the veracity of the evidence attached to submissions.
- xi. The Learned Judge lacked fairness, equity or equal justice extended to ignoring Appellant's request that the Respondent's evidence presented as part of submissions which the court relied upon in its Judgement.
- xii. Notwithstanding Appellants protests, the Plaintiffs filed yet more documentary evidence in their Reply to Defendants' submissions whose contents the ELC adopted in its Judgement against the Appellants.



- xiii. The Learned Judge failed to comply with the principles of equity, fairness espoused in the Environment and [Land Act](#) and enshrined in [the Constitution](#) of the Republic of Kenya by failing to exclude Appellants' documentary evidence attached to submissions.
- xiv. The Learned Judge erred in law and fact by arrogating itself power to review, override and dismiss the earlier decisions entered in HCC Number 162 of 1979 Philip Njeru Vs. Muchembi Chiragu which constituted Appellants pleadings and evidence.
- xv. Failure to consider that the whole suit was res judicata as set out in the defence and thereby contravened Section 28 of the [Environment and Land Court Act](#) which exceeded ELC jurisdiction and authority as ELC is not empowered to reopen, re assess or overrule any court decision issued by a competent court prior to 2012.
- xvi. Failing to appreciate that all the provisions of the [Land Adjudication Act](#), and land (Group Representative) Act and the Registered [Land Act](#) had vested the disputed property in favour of the Appellants long before ELC was constituted.
- xvii. Holding that it had jurisdiction to re-open and scrutinize titles registered after due process other than in accordance with the Land (Group Representative) Act and Land Adjudication Acts and the Registered [Land Act](#) which findings by ELC are lacking in jurisdiction, statutory or evidential capacity.
- xviii. Relying upon inadmissible evidence by witnesses or through submissions in holding or which evidence did not touch on L.R. Mbeti/Gachuriri/172 and predated 1976 long before the registration of the title in Defendants' Group Ranch.
- xix. Holding that the Gekara Clan had any rights over L.R. Mbeti/Gachuriri/172 which issue had been determined in HCCC No. 162 of 1979. Philip Njeru Vs. Muchembi Ciarago and the Gekara Clan claim over the land was dismissed and which parcel of land was expressly the subject matter of the said case.
- xx. Disregarding the Defendants' evidence whereby the Chief Land Registrar accepted the High Court decision in HCCC 162 of 1979 and removed all inhibitions against the Appellants title and rights over the land. This erroneous and unfounded decision by the Learned Judge is lacking rationale in any law or equity.
- xxi. Making erroneous and contradictory rulings by stating that only the 17 Appellants title would be revoked then proceeded to cancel the title for L.R. Mbeti/Gachuriri/172 together with all subsequent sub divisions.
- xxii. Revoking the title to the entire land, the Learned Judge affected Purchasers who acquired the Land without any prior notice and the Appellants had not placed any cautions, inhibitions or Court Orders after 1986 contrary to the Registered [Land Act](#).
- xxiii. The ELC exceeded its jurisdiction and erred by reopening cases and matters substantially determined decades before by arrogating to itself the power to ignore and re-appraise issues determined through due process in Land (Group Representative) Act, [Land Adjudication Act](#) and [Land Registration Act](#) as well as other statutory provisions.
- xxiv. Acted autocratically, misapprehended and misdirected himself on his jurisdiction, the applicable law and the facts and thus occasioned a total miscarriage of justice. Appellants contend that there was no sufficient evidence to support the ELC decision and the same is wholly incompetent and erroneous.



xxv. No prima facie was made out to warrant the grant of the orders given and justice was neither done nor seen to be done.

Submissions by Counsel

10. The appeal was heard by way of written submissions with oral highlighting. Learned counsel Mr. Njiru Mbogo was present for the appellant while learned counsel Mr. Elias Mutuma appeared together with learned counsel Mr. Njagi for the respondents. Mr. Njiru submitted that the suit consisted of a consolidation of several suits at Embu being HCCC No. 50 of 2001, HCCC No. 867 of 1997, HCCC No. 87 of 1997. That the ELC however proceeded with the hearing without ascertaining that all the pleadings and documentary evidence was available for all the consolidated cases. That the ELC ignored all documents produced by the appellants while exclusively referring to respondents' evidence. That all the previous proceedings and records were ignored and the ELC ruled that the appellants had not filed any documents or presented any evidence, yet exhibits 1-13 were produced by the appellants.
11. Counsel for the appellants further submitted that all the consolidated cases involved the suit property and the dispute was between the respondents who were members of Gekara clan and the appellants who were members of Gekara group ranch. That the ELC failed to appreciate that the suit property had been subdivided to over 500 parcels of land and the individual registered owners were not parties to the suit; that the green card in respect of the suit property had been closed on subdivision and ceased to exist way back in 1988.
12. Counsel further submitted that the appellants' case was that the suit property was registered in the name of Gekara group ranch and not Gekara clan. That the appellants were registered under the Group Representatives Act, 1968 and upon its dissolution, the land devolved to individual members of the ranch. Counsel asserted that being a member of Gekara clan did not grant automatic rights to Gekara group ranch land. Counsel further submitted that the issue of legal and beneficial entitlements to the suit property had been finalized in Nairobi Misc. Civil Suit No. 162 of 1977, Philip Njeru vs Muchemi Cairago which ruled that the suit property belonged to Gekara group ranch and not Gekara clan.
13. Counsel further submitted that the ELC exceeded its jurisdiction by finding that the appellants and by extension the *Land Adjudication Act*, the Land (Group Representatives) Act and the Land Acquisition Act had been breached and by ordering that a fresh land adjudication process commence while adjudication had been finalized in 1987. That the decision reached therein was contrary to all statutory and equitable laws. Counsel further submitted that the suit was res judicata in that it was determined in favour of the 1st appellant in Misc. 162 of 1979.
14. Mr. Njagi, learned counsel for the respondents opposed the appeal and submitted that the ELC did not exceed its jurisdiction in determining the issue in dispute between the parties. That the suits, which were consolidated, were filed before the same court in the same year and based on the relief sought, the ELC found it appropriate to consolidate the suits. That the ELC considered all the pleadings filed in the consolidated suits and delivered judgment as to proprietorship of the suit property. That the appellants did not challenge the consolidation of the suits when the same was done and are guilty of laches in raising that issue before this Court.
15. Counsel further submitted that the trial court raised a pertinent issue for determination regarding how Gekara clan land moved to be registered under Gekara group ranch under the Land (Group Representatives) Act, 1968. That the ELC rightly interpreted and applied the laws relied upon during trial and the impugned judgment was duly informed by the law. Regarding the issue of res judicata, counsel submitted that the finding of the High Court in HC Misc Civil Application No. 162 of 1979 was related to 28 parcels of land and the suit property was not among those plots.



16. In conclusion, counsel submitted that the impugned judgment dealt with finality all the issues raised by the parties. That the instant appeal lacks merit and should be dismissed in its entirety with costs to the respondents.

Determination

17. We have considered the record; the submission of parties, the authorities cited and the law. This Court is called upon to exercise its duty as a first appellate court by re-assessing the evidence produced during trial, evaluate it and arrive at its own independent findings taking account that the court neither heard or saw the witnesses as they testified. See Rule 31 (1) of the Court of Appeal Rules 2022 and this Court's decision in *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR. See also *Selle & Another vs Associated Motor Boat Co. Ltd & Others* (1968) EA 123.

18. Further, as was held by the Court of Appeal for East Africa in *Peters vs Sunday Post Limited* [1958] EA page 424:

“It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion.”

19. We discern from the record that the main issue for determination is whether the ELC erred in declaring that the registration of Gekara Group Ranch as proprietor of title No. Mbeti/Gichuriri/172 was fraudulent and ordering that all sub-divisions and transfers of the suit property to the defendants were null and void and whether the suit was *res judicata*.

20. To begin with, the appellants' contention was that the suit before the ELC was *res judicata* by virtue of the decision in HC Misc Civil suit No. 162 of 1979 that dealt with the subject claim of the Gekara clan. We have perused the said decision and noted that the High Court's observation on the matter was that:

“In the notice of motion application filed on 28.08.1079, the applicants are seeking a re-distribution order in respect of the whole clan land which Mr. Muguku explained consisted of over 8,000 acres. Of this clan land about 5,0000 acres had been sub-divided and allocated to clan members leaving 217 persons landless. The remaining land being around 3,000 acres had been converted into trust land for ranching purposes.

It is to be observed that the subject matter of the appeal before the hon. minister was recovery of land situated in Gachuriri Adjudication Section in Embu District and comprising only 28 parcels of land, each mentioned individually in the appeal with the plot number and the name of the registered owner.

The application seeking re-distribution order in respect of the whole of the clan land or any part thereof except in respect of the said 28 parcels is beyond the scope of this application and is incompetent and must be dismissed.”

21. In view of the above finding, we find that the ELC did not err in finding that the subject matter of the decision of the appeal before the Minister and the judgment in HC Misc. Civil Suit No. 162 of 1987 was 28 parcels of land individually mentioned with the plot number and the name of each registered owner. The suit property was not one of the said 28 parcels of land. The subject matter of the said decision was, therefore, not the suit property that was registered under Gekara group ranch and which



was the subject of litigation before the ELC. We therefore find that the claim that the suit filed by the respondents herein in the ELC was res judicata is without merit.

22. On the issue that the ELC did not consider HCCC No. 50 of 2001, from the record, we have noted that there was a chamber summons dated 29th October 2002 that sought consolidation of the said suit with HCCC No. 87 of 1997 on the ground that the parties in the two suits were the same except that HCCC No. 87 of 1997 had more parties included. Further, that the claim was the same and the subject matter thereof was the suit property. That James Ben Mugo was the sole plaintiff in HCCC No. 50 of 2001 hence sought for consolidation with HCCC No. 87 of 1987.
23. Counsel for the respondents maintained that the suit property belonged to Gekara group ranch and not Gekara clan. The respondents' position was that the land ought to be registered in favour of Gekara clan. The trial court sought to determine how the suit property became the property of the group ranch for few individuals of the group and not the entire clan members. The appellants' witness testified that there were 5 clans that contributed the land for ranching purposes as a cooperative society. The clans were Gekara, Kanumu, Kathi, Rurevu and Mugure.
24. Counsel for the respondents further asserted that the group ranch was registered in 1976 and the land was not clan land. That subdivision of the suit property excluded non-members of the group ranch. It was the appellants' case that the decision of HCC No. 162 of 1979 dismissed the issue of clan claiming the suit land. On the other hand, the respondents' assertion was that the suit land belonged to the clan before the registration of the group ranch in the year 1976. As observed by the ELC, the record including the proceedings of the land adjudication committee showed that the suit property was clan land.
25. Counsel for the respondents asserted that the appellants did not demonstrate how the clan land ended up being registered under a group ranch with only a few individuals being members of the group to the exclusion of all other clan members. Counsel for the appellants submitted that there were over 500 persons who owned various parcels of suit property after the subdivision and who were not parties to the suit.
26. Our position is that once the root title of land is challenged, the defense of innocent purchasers ceases to hold any weight. It matters not how 3rd parties subsequently acquired the land. Consequently, we uphold the trial court's finding that the suit property originally belonged to Gekara clan and not Gekara Group ranch and the registration thereof under Gekara group ranch amounted to fraudulent acquisition of the clan land to a few individuals.
27. The upshot is that the appeal lacks merit and is, therefore, dismissed with costs.
28. It is so ordered.

DATED AND DELIVERED AT NYERI THIS 21ST DAY OF MARCH, 2025.

W. KARANJA

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JUDGE OF APPEAL

JAMILA MOHAMMED

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JUDGE OF APPEAL

L. KIMARU



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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

