



REPUBLIC OF KENYA



KENYA LAW
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**Mweri v Mwangi & 3 others (Civil Appeal E013 of 2023)
[2025] KECA 964 (KLR) (4 April 2025) (Judgment)**

Neutral citation: [2025] KECA 964 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL E013 OF 2023
JW LESSIT, A ALI-ARONI & GV ODUNGA, JJA
APRIL 4, 2025**

BETWEEN

EDWARD NDIRANGU MWERI APPELLANT

AND

SAMUEL NJOROGE MWANGI 1ST RESPONDENT

KARANJA KAMONYO 2ND RESPONDENT

MARY WANGECHI GICHUHI 3RD RESPONDENT

JAMES MUKURE MWERI 4TH RESPONDENT

(An Appeal from the Judgment and Orders of the Environment and Land Court at Nyahururu (Y.M. Angima, J.) dated 24th March 2022 in ELC Case No. 11 of 2018)

JUDGMENT

1. The appellant, Edward Ndirangu Mweru, is aggrieved by the Judgment and Orders of the Environment and Land Court at Nyahururu (Angima, J.) dated 24th March 2022. The suit before the trial court was commenced by way of a plaint dated 14th February 2018, by which the appellant and his now deceased mother, Bertha Wanjiru Mweri, (the plaintiff's) sued the 1st, 2nd and 3rd respondents as well as one Ephraim Kariuki Muturi as defendants. The original owner of land Title Nos. Laikipia/Nyahururu/264, 320, 321 and 322 was the late Samuel Mweri Macharia (Samuel), the husband of Bertha Wanjiru Mweri and the father to the appellant, the 4th respondent herein and one Eric Rukwaro Mweri. The 4th respondent and Eric Rukwaro Mweri were joined in the proceedings in the court below as the 1st and 2nd interested parties (together they shall be referred to as the interested parties).
2. Upon the demise of Samuel, the plaintiffs were appointed as administrators of his estate and acting in that capacity, they consolidated the four parcels of land into Title No. Laikipia/Nyahururu/4909 which, upon confirmation of the grant, they later subdivided into seven portions giving rise



to Title Nos Laikipia/Nyahururu/7981-7989 (the suit properties) which they registered in their names as absolute proprietors even though there were seven beneficiaries listed in the Certificate of Confirmation of Grant. Before the said properties could be distributed to the beneficiaries, the interested parties sold and/or leased part of their entitlement to the 1st, 2nd and 3rd respondents and to Ephraim Kariuki Muturi (collectively referred to as the defendants), some of whom took possession thereof.

3. The suit was therefore brought to restrain the defendants from interfering with the plaintiffs' quiet possession of the suit properties an order for vacant possession; costs, and interests. The suit was based on the fact that the defendants were trespassers on the suit properties since the plaintiffs were the only ones authorized to deal with the suit properties in their capacities as the administrators of the estate of Samuel.
4. In their defence and counterclaim, the 1st and 3rd respondents denied liability and contended that they purchased a portion of one acre from the 4th respondent 2nd interested party, Eric, for a consideration of Kshs 650,000, which was to be excised from land parcel no. 7981. Ephraim Kariuki Muturi, the 3rd defendant, on his part, pleaded that he had leased a portion of one acre out of the same parcel of land from the 2nd interested party, who claimed to be a beneficiary of the estate of Samuel.

The 1st respondent also lodged a counterclaim in respect of the said one acre on the basis of being a purchaser for valuable consideration and sought: that he be declared as being entitled to be registered as the proprietor thereof, that the registration of the said parcel of land in the names of the plaintiffs as the absolute proprietors thereof be declared unlawful, null and void; and that the court orders that the said parcel of land be registered in the name of the 2nd interested to effectuate the transfer to the 1st respondent.

5. The 2nd respondent similarly denied liability to the plaintiff's claim and contended that his entry into land parcel no. 7982 was lawful, having purchased a portion thereof measuring 2 acres from the 4th respondent (the 1st interested party), who was a beneficial owner thereof. In his counterclaim, he sought: that he be declared as a bona fide purchaser for value of 2 acres out of land parcel no. 7982 and that he is entitled to be registered as the proprietor thereof; that the registration of the said parcel of land in the names of the plaintiffs as the absolute proprietors thereof be declared unlawful, null and void and be cancelled; and that the court orders that the said parcel of land be registered in the name of the 4th respondent to effectuate the transfer to the him.
6. The 3rd respondent, while denying liability, contended that she entered land parcel no. 7982 lawful upon purchasing one acre thereof from the 4th respondent, a beneficiary of the estate of Samuel. She similarly sought to be declared the bona fide purchaser thereof and to be registered as its proprietor upon the nullification of the plaintiffs' registration and the registration of the parcel in the name of the 4th respondent.
7. In their defence to the counterclaim, the plaintiffs contended that the interested parties had no power to deal with the suit properties as they had no title thereto, hence, the purported sale by them was null and void.
8. In his defence and counterclaim, the 4th respondent denied that the 2nd and 3rd respondents were trespassers upon parcel no. 7982 and disclosed that he sold a portion of 2 acres and 1 acre, respectively, to the 2nd and 3rd respondents out of parcel no. 7982, which formed his legal entitlement under the Grant. According to him, the appellant had previously purchased a portion of the said land from him after the confirmation of Grant and hence was estopped from asserting the contrary. He sought a declaration that he was the bona fide owner of the said parcel of land and that the registration thereof



in the name of the plaintiffs be declared null and void and canceled and the parcel be registered in his name to enable him to complete the contract between him and the 2nd and 3rd respondents. The 2nd interested party adopted a similar position to that of the 4th respondent. According to him, he was a minor at the time the plaintiffs registered themselves as the proprietors of the suit properties and hence were registered in trust for him. He admitted that he leased one acre of parcel no. 7981 to Ephraim Kariuki Muturi for a period of one year.

9. In his judgement, the learned Judge found: that the defendants were not trespassers on the suit properties since the interested parties' had interests therein which they could alienate to the defendants; that being beneficiaries of the estate of the deceased, Samuel, the interested parties were entitled to a share of the suit properties and they were at liberty to lease or sell their entitlement from their father's estate; that the plaintiffs were not entitled to the reliefs sought; that the 1st, 2nd and 3rd respondents were purchasers for value of the portions of land out of the suit properties; that the 1st respondent bought a portion of one acre out of land parcel no. 7981; that the 2nd respondent bought 2 acres out of land parcel no. 7982; that the 3rd respondent bought one acre out of parcel no. 7982; that a declaration that the plaintiffs' registration was unlawful, null and void could only be sought by the beneficiaries of the estate and not the purchasers; that the certificate of confirmation of grant indicated the 4th respondent (the 1st interested party) was entitled to 18 acres out of the suit properties; that the plaintiffs did not tender any lawful justification or excuse for failing to facilitate the transmission of the 4th respondent's share to him as required by law for more than 10 years; that the 4th respondent was entitled to the prayers sought in the counterclaim; and that the costs of the suit be awarded to the 1st, 2nd and 3rd respondents while the costs of the counterclaim be awarded to the 1st, 2nd, 3rd and 4th respondents to be borne by the appellant.
10. Dissatisfied with that decision, the appellant appealed to this Court setting out, as his grounds of appeal the contentions:

that the learned Judge totally misconstrued the applicable law thus arriving at the wrong decision; that the learned Judge erred in law for dealing with matters touching on succession whilst the Environment and Land Court has no jurisdiction to deal with succession matters; that the learned Judge erred in law and fact in dealing with matters not before him and in proceeding to make a determination on the same without affording the appellant a chance to address the same; that that learned Judge erred in law in finding that a deceased's property could be dealt otherwise than provided by section 82 of *Law of Succession Act* CAP 160 Laws of Kenya; that the learned Judge erred in law in ignoring the appellant's case before him and continuing to find for the respondents; that the learned Judge erred in law in finding as he did that the 4th respondent had power to sell, transfer or in any manner alienate the suit property to the 2nd and 3rd respondent; that the learned Judge erred in law and fact in finding that the 1st, 2nd and 3rd respondents were purchasers for value from the 4th respondent whilst the 4th respondent had no property to pass to them.

11. The appellant prayed that the impugned judgment and all the orders flowing therefrom be set aside and substituted with orders allowing the appellant's suit and dismissing the 4th respondent's counterclaim with costs.
12. We heard the appeal on the Court's virtual platform on 25th November 2024, when learned counsel, Mr Nganga, appeared for the appellant while learned counsel, Mr Gikunju, appeared for the 2nd and 4th respondents. There was no appearance for the 1st and 3rd respondents despite due service of the hearing notice. Counsel relied entirely on their written submissions.



13. The appellant submitted: that pursuant to sections 79 and 82 of the *Law of Succession Act*, only a personal representative has power to deal with a deceased's property; that the learned Judge's holding that a beneficiary could pass a good title to a third party was therefore wrong; that the learned Judge had no jurisdiction to deal with matters touching succession; that the administration of the deceased's estate including distribution could only be handled under the *Law of Succession Act*; that the legality or otherwise of the appellant's registration as the title holder was never canvassed before the court; that the learned Judge misapprehended the law and came to a wrong conclusion on a matter that was not even before the court; that the learned Judge's findings were not anchored on known law and were without jurisdiction; that the appellant's registration as the administrator was lawful and could not have been defeated other than by revocation or annulment pursuant to sections 76 and 82(b) of the *Law of Succession Act*; and that the 4th respondent had no title in law and had no authority to sell the suit properties and therefore any purported sale by him was null and void ab initio.
14. The 2nd and 4th Respondents submitted: that the 4th respondent had an entitlement over plot No. 7982 out of which he sold 2 acres to the appellant and which sale the appellant approved of, 2 acres to the 2nd respondent and 1 acre to the 3rd respondent; that by taking out the titles in their names over the parcels of land that were distributed to other beneficiaries, the appellant and his deceased mother were in clear violation of the orders as contained in the Certificate of Confirmation of Grant as well as section 83(f) of the *Law of Succession Act*;

that the court should find that the 4th respondent had proprietary interest over plot No. 7982 to sell to the 2nd and 3rd respondents; that the question for determination between the appellant and the 4th respondent was not whether the 4th respondent was entitled to plot No. 7982 since the question of entitlement had been concluded by the Succession Court which had already pronounced itself on the rights of beneficiaries over their deceased father's estate and what was left for the personal representatives was to comply with the orders of the Succession Court; that the dispute was who should have been registered as proprietor of the said plot of land in enforcement of the succession court's order and therefore the issue of title, use and occupation of the said plot of land fell squarely within the ambit of the Land and Environment Court as enshrined in Article 162 of the *Constitution*; that the Succession Court was functus officio in so far as confirmation of the Grant was concerned and reliance is placed on *In Re Estate of Kiberenge Mukwa (Deceased)* [2021] eKLR; that it was the process of transmission that the 4th respondent was seeking to enforce in his counterclaim which issue was properly within the jurisdiction of the Environment and Land Court, based on the authority in the case of *Re estate of Gideon Manthi Nzyuko (Deceased)* [2021] eKLR to the effect that after confirmation of grant, a dispute relating to land is to be taken up by the Environment and Land Court for adjudication; that on the authority of the case of *Re Estate of Sibianus Ramba Odera (Deceased)* [2020] eKLR, transmission of property upon death, after confirmation of grant is a process that is governed by the *Land Registration Act* and not the *Law of Succession Act*; that the 4th respondent properly made his claim before the correct court hence the ELC court had the requisite jurisdiction to hear and determine the 4th respondent's counterclaim and the whole suit; that the appellant's registration of plot 7982 was unlawful for having offended a clear court order as well as section 83(f) of the *Law of Succession Act*.

15. We have considered the appeal, the submissions and the authorities cited. This being a first appeal, we are not just mandated, but enjoined to re-evaluate the evidence adduced before the trial court and arrive at our independent judgment on whether or not to allow the appeal. In so doing, we are expected



to subject the whole of the evidence to fresh and exhaustive scrutiny and draw our own conclusions therefrom, bearing in mind that we did not have the opportunity of seeing and hearing the witnesses first-hand. See *Selle & another v Associated Motor Boat Co. Ltd. & others* [1968] EA 123.

16. While we appreciate that we may, in appropriate cases, reverse or affirm the findings of the trial court in *Peters v Sunday Post Limited* [1958] EA 424, the predecessor to this Court, stated that:

“Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or has plainly gone wrong, the appellate court will not hesitate so to decide.”

17. We must however, be cautious when interfering with the findings of fact by the trial Judge since we can only interfere with those findings of fact if it is shown that the trial Judge took into account facts or factors which should not have been taken into account, or that there was a failure to take into account matters which should have taken into account or that there was a misapprehension of the effect of the evidence or that in reaching the findings arrived at it is demonstrated that wrong principles were acted upon. See *Mohammed Mahmoud Jabane v Highstone Butty Tongoi Olenja* [1986] KLR 661; 1986-1989] EA 183.

18. In this appeal, we were urged to find that the learned Judge had no jurisdiction to entertain the dispute before him. We appreciate that a challenge to the jurisdiction of a court to hear a matter is so grave that it must be heard and determined at a preliminary stage of the proceedings, or as soon as the same has been raised. The reason for this, according to the holding in case of *Owners of Motor Vessel “Lilian S” v Caltex Oil (Kenya) Limited* (1989) I KLR is because:-

“Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of the proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion it is without jurisdiction ...where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgement is given”.

19. It is trite law, as held by the Supreme Court in the case of *Samuel Kamau Macharia & Anor v. KCB* (2012) eKLR, that jurisdiction stems from the [Constitution](#) and Statute.

20. The appellant’s complaint was that the suit ought to have been filed before the Succession Court, since the issues in dispute revolved around the administration of the estate of Samuel. It is not in dispute that the beneficiaries and assets of the estate of Samuel had been identified and their mode of distribution determined. That mode was contained in the Certificate of Confirmation of Grant dated 28th July 2000. That certificate set out the particulars of the suit properties and how they were to be distributed. In that certificate, the 4th respondent was to get 18 acres.

21. The [Law of Succession Act](#) does not deal with transmission by the personal representatives of the estate of a deceased. This process is provided for in section 61 of the [Land Registration Act](#) as read with regulations 55 and 56 of the Land Registration (General) Regulations. Section 2 of the [Land Registration Act](#) provides that:

“Court” means the Environment and Land Court established under the [Environment and Land Court Act](#), 2011, No. 19 of 2011.



- 22. Once the Certificate of Confirmation of Grant is issued by the Succession Court, the subsequent processes relating to transmission of title are undertaken under the Land Registration Act and in the event of any dispute arising from that process, the right forum to litigate such disputes is the Environment and Land Court. From the 4th respondent's counterclaim, his grievance with the plaintiffs was that they were not facilitating him to have his entitlement registered in his name, so that he could fulfil his contractual obligations to those to whom he had sold a portion of his entitlement. In our view, that was not a matter for the Succession Court. We accordingly find that the trial court was properly seized of jurisdiction to deal with the dispute.
- 23. It is contended that since the suit properties were still registered in the names of the plaintiffs as administrators of the estate of Samuel, the 4th respondent had no power to deal with them. In our view, the property having been transmitted to the 4th respondent, he had the beneficial interest, notwithstanding the fact that the legal interest was still retained, albeit unjustifiably, by the plaintiffs in their capacity as legal trustees. In our view, the 4th respondent was properly entitled to seek that the property be transferred to him for the purposes of transferring the portions he had disposed of to third parties, who could not be treated as trespassers.
- 24. In his judgement, the learned Judge did not grant the orders that were being sought by the 1st, 2nd and 3rd respondents after finding, rightly in our view, that the said respondents could not seek orders nullifying the registration of the plaintiffs as the proprietors of the suit properties. The only people who could seek such orders were the interested parties. However, the learned Judge was correct in finding that the said respondents were entitled to the portions they acquired from the interested parties. Based on the 4th respondent's counterclaim, the learned Judge was right in ordering the cancellation of the registration of land parcel No. Laikipia/Nyahururu/7982 in the names of the plaintiffs and directing that it be registered in the name of the 4th respondent.
- 25. We accordingly find no merit in this appeal, which we hereby dismiss with costs to be borne by the appellant.
- 26. Judgement accordingly.

DATED AND DELIVERED AT NYERI THIS 4TH DAY OF APRIL, 2025.

J. LESIIT

JUDGE OF APPEAL
ALI-ARONI

JUDGE OF APPEAL
G.V. ODUNGA

JUDGE OF APPEAL

I certify that this is the true copy of the original
 Signed
DEPUTY REGISTRAR

