



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gatiu and Gatiu & another v Wamutu (Civil Appeal  
452 of 2019) [2025] KECA 818 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KECA 818 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 452 OF 2019  
FA OCHIENG, LA ACHODE & JM NGUGI, JJA  
MAY 9, 2025**

**BETWEEN**

**PHILIP KAMANGU GATIU & NAHASHON GATIU ..... 1<sup>ST</sup> APPELLANT**

**JAMES KARANJA NGONYA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**MARY WANJIKU WAMUTU ..... RESPONDENT**

*(An appeal from the Judgment and Decree of the High Court of Kenya at  
Thika (Angote, J.) dated 28th June 2019 in ELC Appeal No. 10 of 2017)*

**JUDGMENT**

1. This is an appeal from the judgment of the Environment and Land Court (ELC) at Thika, which on 4<sup>th</sup> February 2025 struck out the appellants' appeal on the basis that the record of appeal was incomplete. Specifically, the ELC found that the appellants had failed to include the award of the Thika Land Disputes Tribunal dated 27<sup>th</sup> May 2009, and the judgment in High Court Judicial Review Application No. 53 of 2011, which had allegedly already dealt with some of the issues raised in the appeal.
2. Aggrieved by that decision, the appellants filed the present appeal, seeking to set aside the ELC's order striking out their appeal and urging this Court to determine the matter on its merits, by setting aside the decision of the tribunal.
3. The dispute herein originated from a decision made by the Thika Land Disputes Tribunal on 27<sup>th</sup> May 2009, which was subsequently adopted by the Thika Chief Magistrate's Court on 22<sup>nd</sup> September 2009 in Misc. Suit No. D.O. 39 of 2009. The judgment was delivered in the Environment and Land Court (ELC) at Thika in ELC Appeal No. 10 of 2017. The parties involved were Philip Kamangu Gatiu & Nahashon Gatiu (the 1<sup>st</sup> appellants); James Karanja Ngonya (the 2<sup>nd</sup> appellant); and Mary Wanjiku Wamutu (the respondent).



4. In the memorandum of appeal, filed in the ELC Court in August 2015, the appellants stated that they hold Letters of Administration for the estate of the Late Hannah Wanjiku Mwangi, who was the proprietor of LR No. Ruiru/Mugutha Block 1/T 2735; they also stated that the 2<sup>nd</sup> appellant is the proprietor of LR No. Ruiru/Mugutha Block 1/T 2734, hereinafter, “the suit properties.” They claimed that the respondent filed a complaint, (Case No. TKA/LDT/41/2008), with the Thika Division Land Disputes Tribunal, asserting an interest in these properties.
5. The appellants’ case was that at the time the respondent filed her complaint, they were the registered proprietors of these suit properties with valid title deeds. Specifically, the 1<sup>st</sup> appellants, as legal administrators for the estate of the Late Hannah Wanjiku Mwangi, stated that she purchased L.R. No. Ruiru/Mugutha Block 1/T 2735 on 3<sup>rd</sup> August 1998, and a title deed was issued on 5<sup>th</sup> May 2008. The 2<sup>nd</sup> appellant stated that he purchased L.R. No. Ruiru/Mugutha Block 1/T 2734 from Eunice Njeri Nganga and a title deed was issued on 8<sup>th</sup> February 2006.
6. The Thika Land Disputes Tribunal delivered its verdict on 27<sup>th</sup> May 2009, in favor of the respondent. The tribunal ordered that the suit properties should be transferred to the respondent, as she was deemed to be the rightful owner. The elders requested the Resident Magistrate’s Court at Thika to order the surrender of the title deeds held by the appellants to enable the respondent to be registered as the proprietor of the suit properties.
7. Dissatisfied with the tribunal’s decision, the appellants lodged an appeal with the Provincial Land Appeals Committee in Nyeri. On 22<sup>nd</sup> September 2009, the Honourable Court in D.O. Case No. 39 of 2009 ordered that the matter be stood over generally until the appeal lodged before the Provincial Land Appeals Committee was heard and determined.
8. However, the appellants submit that their appeal before the Provincial Lands Appeal Committee could not be set down for hearing for reasons beyond their control. They then approached the Judicial Review Court. While both the appeal and judicial review suits were pending, the respondent filed a notice of motion application dated 19<sup>th</sup> July 2012, asking the Chief Magistrate’s Court to adopt the decision of the Thika Land Disputes Tribunal. This application was dismissed because the appeal lodged against the land tribunal had not yet been heard and determined.
9. Owing to the repeal of the law abolishing Land Disputes Tribunals and Provincial Appeals Committees, the appellants state that they were barred from pursuing their initial appeal at the provincial level, leading them to file the current appeal contesting the tribunal’s decision and its adoption by the magistrate’s court.
10. Because they had obtained title deeds prior to the complaint, they argued that the tribunal lacked the power, authority, or right to order the cancellation of their titles. Consequently, they viewed the tribunal’s decision as ultra vires (beyond its legal power), null, and void. They sought the annulment of the tribunal’s award and its subsequent adoption by the lower court.
11. The appeal was heard through the submission of written arguments. The appellants’ advocate reiterated that the suit properties were registered in the appellants’ names at the time the respondent lodged her complaint. They submitted that the tribunal lacked and exceeded its jurisdiction.
12. The respondent’s counsel, in turn, argued that the appellants were required to file their appeal with the Provincial Appeals Committee within thirty (30) days of the award date, and there was no proof they had done so. They also submitted that any complaint regarding the tribunal’s jurisdiction should have been raised through a judicial review process.



13. In its analysis, the court reviewed the record of appeal. The court found that the proceedings of the Thika Land Disputes Tribunal, which were the foundation of the appeal, were incomplete. Specifically, the court stated that the award made by the tribunal was not present in the record. Due to the incompleteness of the tribunal's proceedings, the court concluded that it was unable to determine the appeal.
14. Furthermore, the court observed from a ruling of the lower court dated 10<sup>th</sup> September 2013, that it appeared that the appellants had previously challenged the tribunal's decision in the High Court through Judicial Review Application No. 53 of 2011. This application, according to the record, was dismissed. The court noted that the appellants had failed to include the judgment from this judicial review application in their record. Without this judgment, the court could not ascertain whether the issues presented in the current appeal were the same as those already raised and potentially decided in the judicial review case.
15. The court determined that the appellants' failure to provide a complete set of the tribunal's proceedings and the High Court judgment from the judicial review application constituted a non-disclosure of material facts.
16. Based on this ground of non-disclosure of material facts, the court ordered that the appellants' appeal be struck out, with costs awarded to the respondent.
17. The appellants, being dissatisfied with the ELC judgment, filed a notice of appeal, and subsequently, the instant appeal before this Court. Their memorandum of appeal dated 12<sup>th</sup> September 2019, lists several grounds, primarily faulting the learned ELC judge for:
  - a. Failing to allow the appeal and set aside the tribunal decision and its adoption, arguing that the appellants proved their case on a balance of probability.
  - b. Failing to find that the proceedings were complete and that issues raised in JR Misc. Application 53 of 2011 were not the subject of the ELC Appeal, although undisclosed.
  - c. Failing to consider the abolition of tribunals and the subsequent adoption of the decision.
  - d. Failing to take into account that the suit properties had registered proprietors with title deeds when the respondent filed her complaint.
  - e. Failing to appreciate the procedural history involving the appeal to the provincial committee, the judicial review application, and the magistrate's court application.
  - f. Failing to find that the tribunal lacked the power or jurisdiction to hear the complaint or order cancellation of title deeds held by the appellants, who obtained bona fide title deeds prior to the complaint.
  - g. Failing to appreciate that the tribunal's decision and its adoption were ultra vires, without jurisdiction, and amounted to an abuse of process as the tribunal decision was illegal, null, and void.
  - h. Entertaining extraneous allegations of title by the respondent who had no legal right.
  - i. Failing to properly evaluate the documentary evidence adduced by the appellants.
18. When the appeal came up for hearing on 4<sup>th</sup> February 2025, Ms. Njeri Kariuki, learned counsel, appeared on behalf of Mr. Kosea Titus for the appellants. The firm of Muturi Njoroge & Company



- Advocates was noted to be on record for the respondent, but there was no appearance from the said firm of advocates.
19. Ms. Kariuki informed the court that the appellants would rely entirely on their written submissions dated 12<sup>th</sup> July 2024.
  20. In their written submissions, the appellants submitted that the underlying dispute originated from a complaint filed by the respondent at the Thika Division Land Tribunal, claiming an interest in the suit properties.
  21. The appellants' core argument is that the Thika Land Disputes Tribunal lacked the power, authority, or right to hear and determine the complaint or to make an order for the cancellation of the title deeds held by the appellants. This is because the suit properties were already registered in the appellants' names with valid title deeds obtained prior to the respondent filing her complaint. They relied on the principle that Land Dispute Tribunals lacked jurisdiction over registered land, especially matters touching on title.
  22. The appellants submitted that the tribunal's decision was substantially and procedurally ultra vires and/or done without jurisdiction. They contended that the tribunal erred by entertaining extraneous and inadmissible allegations about a purported sale agreement and by recommending the cancellation of their certificates of title. They asserted that the power to rectify the register is limited to the Registrar under Sections 142 and 143 of the Registered Land Act (now repealed).
  23. The appellants submitted that the learned judge erred in failing to take into account the documentary evidence of purchase agreements and title deeds submitted by the appellants, proving they were the legal representatives and proprietors who purchased the suit properties and obtained titles prior to the complaint.
  24. The appellants prayed that the honourable court find their appeal to have merit and set aside the decision of the Thika Land Dispute Tribunal made on 27<sup>th</sup> May 2009, and adopted by the Thika Magistrate's Court on 22<sup>nd</sup> September 2009, and that the respondent's complaint be dismissed with costs to the appellants.
  25. We have carefully considered the record, submissions, authorities cited, and the law. The issues arising for determination are: whether the Environment and Land Court erred in striking out the appeal for incompleteness and non-disclosure of material facts; whether the appeal before the ELC was competently before the court; whether the transitional legal framework permitted or barred the appellants from pursuing their appeal in the ELC; and what orders should issue.
  26. A valid record of appeal is the bedrock of appellate proceedings. Without it, the court cannot fairly or legally assess the correctness of the decision being challenged. In this instance, the ELC correctly noted that the appellants failed to include: the award of the Thika Land Disputes Tribunal, which was the subject of the appeal; and the judgment in JR Application No. 53 of 2011, which was material to establishing whether the dispute had already been adjudicated.
  27. The absence of the tribunal's award meant the court could not examine what findings were made or the legal basis of the complaint. The court in the case of *Law Society of Kenya vs. Centre for Human Rights & Democracy & Others*, Petition 14 of 2013, highlighted the mandatory nature of procedural rules.
  28. Similarly, in the case of *Bwana Mohamed Bwana vs. Silvano Buko Bonaya & 2 Others* [2015] eKLR, the court emphasized that the absence of essential documents renders an appeal incompetent. While



- in the case of *Chege vs. Suleiman* [1988] KECA 131 (KLR), this Court noted that the absence of the order appealed against is a jurisdictional issue.
29. Furthermore, the omission of the judicial review decision raised legitimate concerns that the matter might be *res judicata* under Section 7 of the *Civil Procedure Act*. The ELC was entitled to verify whether the matter had already been conclusively determined by the High Court. That verification was impossible in the absence of the said judgment.
  30. The ELC noted that the failure to disclose these crucial documents prejudiced the respondent and impeded the court's ability to do justice. In the case of *Uhuru Highway Development Limited vs. Central Bank of Kenya & 2 Others* [1996] eKLR, this Court emphasized that a party who comes to court is under a duty to make full and frank disclosure of all material facts.
  31. The appellants invoked Article 159(2)(d) of *the Constitution*, urging the court to disregard procedural technicalities. Although Article 159(2)(d) of *the Constitution* encourages courts to overlook procedural technicalities in favour of substantive justice, this principle does not excuse material omissions that go to the root of the matter.
  32. As was stated in the case of *Nicholas Kiptoo Arap Korir Salat vs. IEBC & 6 Others* [2013] eKLR, rules of procedure are not mere technicalities but handmaidens of justice. Article 159 is not a panacea for every procedural default. Material omissions that impair a court's ability to dispense justice cannot be shielded under Article 159.
  33. Without the core document being appealed from (i.e., the tribunal's award), the appeal was incompetent *ab initio*. Therefore, the court could not be called upon to determine an appeal when it lacked the legal foundation and supporting record. The ELC was thus right in concluding that the appeal as filed was not only incomplete but fundamentally defective and incompetent.
  34. As regards the transitional framework, the Land Disputes Tribunals Act was repealed by the enactment of the *Environment and Land Court Act*, No. 19 of 2011, which came into effect on 30<sup>th</sup> August 2011. Section 30(1) of the ELC Act provides:
    - (1) All proceedings relating to the environment or to the use and occupation and title to land pending before any Court or local tribunal of competent jurisdiction shall continue to be heard and determined by the same court until the Environment and Land Court established under this Act comes into operation or as may be directed by the Chief Justice or the Chief Registrar. (2) The Chief Justice may, after the Court is established, refer part-heard cases, where appropriate, to the Court.
  35. Paragraph 22 of the Sixth Schedule to *the Constitution* provides that:

“All judicial proceedings pending before any court shall continue to be heard and shall be determined by the same court or a corresponding court established under this Constitution or as directed by the Chief Justice or the Registrar of the High Court.”
  36. It follows that the appellants were permitted to migrate their matter to the ELC. However, such transition required compliance with statutory requirements and procedural rules, including the filing of a complete record of appeal and full disclosure of material facts. The ELC did not reject the appeal because of transition itself, but because of non-compliance with basic procedural standards necessary to give effect to that transition.



- 37. The omissions in this case were not minor defects, they went to the core of the matter. The ELC had no record of the decision being appealed, nor of the previous judgment potentially resolving the same issues. In such a vacuum, the ELC was correct to strike out the appeal.
- 38. We find no fault in the reasoning or conclusion of the learned ELC judge. The striking out of the appeal was justified by the appellants' failure to include material documents necessary for a just determination of the appeal.
- 39. The procedural lapses went to the core of the case and were not mere technicalities. In the absence of the award being challenged and a prior High Court decision on the same issue, the ELC could not properly exercise appellate jurisdiction.
- 40. Subsequently, we make the following orders:
  - a. The appeal is hereby dismissed.
  - b. The judgment of the Environment and Land Court at Thika in ELC Appeal No. 10 of 2017 is upheld.
  - c. Costs of this appeal are awarded to the respondent.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY, 2025.**

**F. OCHIENG**

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**JUDGE OF APPEAL**

**L. ACHODE**

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**JUDGE OF APPEAL JOEL NGUGI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

