



Muzoka & another (Practicing as Omulama E. M. & Company Advocates) v Kirima & 4 others (Civil Appeal E021 of 2023) [2025] KECA 1293 (KLR) (18 July 2025) (Judgment)

Neutral citation: [2025] KECA 1293 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL E021 OF 2023
AK MURGOR, KI LAIBUTA & GWN MACHARIA, JJA
JULY 18, 2025**

BETWEEN

**CHARO BOMBA MUZOKA 1ST APPELLANT
ELAINE MUKOYA OMULAMA 2ND APPELLANT
PRACTICING AS OMULAMA E. M. & COMPANY ADVOCATES**

AND

**ESTHER GACERI KIRIMA 1ST RESPONDENT
SEGA VENTURES LIMITED 2ND RESPONDENT
JELANI APARTMENTS LIMITED 3RD RESPONDENT
CHIEF MAGISTRATE, MOMBASA 4TH RESPONDENT
REGISTRAR OF TITLES, MOMBASA 5TH RESPONDENT**

(An Appeal against part of the Judgment of the Environment and Land Court at Mombasa (Sila Munyao, J.) delivered on 24th January 2023 in Mombasa Environment & Land Court Judicial Review Application No. 1 of 2022 (J.R))

JUDGMENT

1. The appeal concerns an Originating Summons filed by the 1st Appellant, Charo Bomba Muzoka, against the 1st Respondent through the 2nd Appellant, a firm of advocates, being Mombasa Chief Magistrate’s Court Case No. E001 of 2020. In the suit, the 1st Appellant claimed that the 1st Respondent’s interest in a parcel of land situated in Mombasa County and known as Subdivision number 1XX13/I/MN registered as CR. NO. 37485 (the subject property) measuring approximately zero decimal two zero seven seven (0. 2077) hectares had been extinguished, and that the Registrar of



- Titles Mombasa do cancel the entries on the register and enter the 1st Appellant and the 3rd parties in the title.
2. Pursuant to the Originating summons, the 1st Appellant sought a raft of orders, including that: i) the Originating Summons be served on the 1st Respondent by way of substituted service through advertisement in the local daily newspapers with nationwide circulation; ii) the 1st Appellant be registered forthwith as the proprietor of the subject property without gazette; iii) the 4th Respondent, the Land Registrar Mombasa County, be ordered to reconstruct the records of the subject property forthwith without gazette and remove any caution or restriction or caveat or order registered against the title forthwith and without gazette and, thereafter, do proceed and comply with the court's orders; iv) the Registrar of Titles, Mombasa do issue a Certificate of Title for the subject property; v) the orders be registered against the title to the subject property in terms of Section 38(2) of the *Limitation of Actions Act*; and vi) that the costs of this Originating Summons be provided for.
 3. In the suit, the 1st Appellant claimed to have been in occupation of the subject property for more than twelve years, and that no one had ever brought a claim of ownership of the land; and that he lived there with his family and openly developed it without hindrance or interruption for the period he was in occupation. He claimed that the 1st Respondent, the owner of the subject property, was absent; and that he was in actual possession and had acquired rights over the land in accordance with the provisions of the *Limitation of Actions Act*.
 4. The Originating Summons proceeded to hearing in the absence of the 1st Respondent and, in its determination, the trial Magistrate allowed the 1st Appellant's claim as prayed.
 5. Aggrieved, the 1st Respondent filed Judicial Review proceedings seeking to quash the judgment of the Magistrate's court on grounds that, the Appellant's case being a claim for adverse possession, the Magistrate's court did not have jurisdiction to hear it and, further, it had no substantive and pecuniary jurisdiction to hear a dispute where the value of the land was Kshs. 55 million, which was well beyond the prescribed Kshs. 20 million pecuniary limit; that she was not served with summons, and that the process for issuance of the provisional title to the 1st Appellant was not followed as the requisite advertisements were not published; and that, upon obtaining judgment, the 1st Appellant was transferring the suit land to the interested parties being the 2nd and 3rd Respondents.
 6. The Judicial Review application was brought under Sections 8 and 9 of the *Law Reform Act*, Section 9 of the *Fair Administrative Action Act*, 2015 and Order 53 Rule 1 & 2 of the Civil Procedure Rules, 2010. In summary, the 1st Respondent sought a declaration that the Appellants and the 2nd to 4th Respondents conspired to defraud the 1st Respondent of the subject property; a declaration that the Appellants and interested parties knew or ought to have known that the 4th respondent had no jurisdiction to hear the Originating Summons; a declaration that the Appellant and the 2nd and 3rd Respondents knew or ought to have known that the subject property was valued at more than Kshs. 20,000,000.00 and that, therefore, the 4th respondent had no jurisdiction to determine it; a declaration that the 2nd Appellant knew, or ought to have known, that the decree was a nullity as a Magistrate has no jurisdiction to determine an Originating Summons under Section 38 of the *Limitation of Actions Act* and Order 37 of the Civil Procedure Rules, 2010; a declaration that, when the 5th Respondent published Gazette Notice No. 9879 of 24th September 2021, he did so fraudulently by falsely alleging in that Gazette Notice that he had made all effort to compel the 1st Respondent to surrender the title when he knew that he had not made any efforts or issued any notice in writing to the 1st Respondent; a declaration that the Originating Summons before the Magistrate's court was based upon a false



- affidavit drawn by the 2nd Appellant and sworn by her client, and that the Judgment founded on perjured evidence was fraudulently procured and therefore null and void; an order to evict the 2nd and 3rd respondents; aggravated damages against the Appellants and the 2nd to 5th Respondents, and interest at court rates; and costs.
7. On their part, the 1st Appellant denied the claim and stated that he had lived on the subject property adversely for 12 years, and that he instructed the 2nd Appellant to file a suit for adverse possession, which led to the filing of the Originating Summons before the Magistrate's Court; that the trial Magistrate performed his judicial duties legally and procedurally until delivery of the Judgment; and that, upon receipt of the Judgment and decree, the 2nd Respondent verified the details before gazetting the decree for 60 days as required by law, and that no objection was raised within that period. He was thereafter issued with a title in his name on 26th November 2021. Thereafter, the 2nd and 3rd Respondent offered to purchase the subject property which he agreed to sell to them.
 8. The 2nd Appellant, for its part, acknowledged acting as counsel for the 1st Appellant in the suit before the Magistrate. She stated that she sought leave to serve the 1st Respondent by substituted service, which was granted, and service was executed as ordered; that the 4th Respondent was satisfied with service and proceeded to fix a hearing date, and that the case was duly heard and Judgment delivered. She claimed that title to the subject property passed to the 1st Appellant who later sold it to the 3rd and 4th Respondents. Finally, she averred that the Judicial Review application was time-barred.
 9. In response, the 3rd and 4th Respondents claimed that they were bona fide purchasers of the subject property without notice as the transfer was based on a lawfully obtained decree; that the Appellants had not shown any element of fraudulent dealing attaching to them; that the Magistrate's Court had jurisdiction to hear the case, and that the decision of the court extinguished the 1st Respondent's title.
 10. The 5th and 6th respondents claimed that, on 10th November, 2020, the 2nd Appellant made an oral application to be granted leave to serve the pleadings by substituted service, which application was allowed; that, on 30th November 2020, the 2nd Appellant appeared in court and stated that she had served the pleadings, but that there was no appearance entered by the 1st Respondent, whereupon the 2nd Appellant requested for a hearing date and the matter was fixed for hearing on 10th February 2021; that the case proceeded for hearing and Judgment was subsequently delivered; that the court was not informed that the subject property was worth Kshs. 55 million; that, all through, the 5th respondent (the Magistrates' Court, Mombasa) acted in good faith; that the 6th respondent (the Registrar of Titles) was never called to testify in the matter and acted in good faith and in obedience to the court order after verifying that the court order was genuine and authentic.
 11. The trial Judge, upon considering the Judicial Review application, held that the suit was not capable of being maintained under Order 53 of the Civil Procedure Rules as it was time-barred since it was filed more than 6 months after the date of the Judgment in Mombasa CMCC ELC No. E001 of 2020 was rendered. With respect to reliance by the 1st Respondent on the Fair Administrative Action (there is no 's') Act, the learned Judge found that it was not applicable since the Act is restricted to administrative rather than judicial decisions. Instead, the court invoked its supervisory jurisdiction under Article 165 (6) of *the Constitution* and, after holding that the trial Magistrate had no jurisdiction to determine the Originating Summons, quashed the proceedings in Mombasa CMCC E001 of 2020 and all consequential orders, including an order cancelling all entries made in the title to the subject property pursuant to the judgment and decree in Mombasa CMCC No. E001 of 2020; an order of cancellation of the provisional title to the subject property issued to the 1st Appellant; an order of cancellation of the transfer of the provisional title to the subject property to the 2nd and 3rd Respondents, and further declared the title in their name to be invalid with the only valid title to the



- subject property being the original title held by the 1st Respondent; an order that the interested parties forthwith vacate the subject property; and a declaration that only the 1st Respondent was entitled to exercise proprietary rights over the subject property.
12. Aggrieved, the Appellants have filed an appeal to this Court on grounds that: the learned Judge was in error in proceeding with the Judicial Review application even when the court found that it was time barred; in assuming appellate jurisdiction when no appeal was before the court; in failing to down his tools upon finding that the suit was time barred and incapable of being sustained under the *Fair Administrative Action Act*; in failing to remain impartial and objective, and in arriving at a wrong decision; in the court clothing itself with appellate powers and decided the suit without the benefit of the primary file or the evidence; in acting ultra vires his powers and arriving at a manifestly unfair decision; and in failing to consider the Appellants' pleadings and submissions.
 13. The 1st Respondent also filed a cross appeal on grounds which, when summarized, are that: the jurisdiction to hear and determine adverse possession claims under the *Limitation of Actions Act* are domiciled in the Environment and Land Court presided over by a Judge and not in the Magistrates Courts; that the 1st Respondent's Notice of Motion dated 3rd February 2022 and amended on 20th June 2022 was not time barred; that the learned Judge had unlimited jurisdiction under Articles 10(2), 165(6) and (7) of *the Constitution*, and the right to a fair trial, access to justice and fair hearing as guaranteed by Articles 25(c), 48 and 50(1) of *the Constitution*; that declaratory orders against the Appellants and the 2nd, 3rd, 4th and 5th Respondents and the prayer for assessment of general, punitive and aggravated damages to be paid by the Appellants and the 4th Respondent.
 14. The Appellants and the 1st Respondent filed written submissions and, when the appeal came up for hearing on a virtual platform, Ms. Mukoya, learned counsel for the Appellants was in court, as was Mr. Kinyua, learned counsel for the 1st Respondent. There was no appearance for the 2nd and 3rd Respondents despite having been served with a hearing notice.
 15. In their written submissions, the 1st Appellant submitted that, under section 13(1) of the *Environment and Land Court Act*, the Environment and Land Court established under Article 162 (1) and (2)(b) of *the Constitution* is empowered with both original and appellate jurisdictions to handle, inter alia, any dispute relating to land and environment; that section 13 (4) of the same provision provides for its appellate jurisdiction over matters handled by the subordinate courts and tribunals. Section 26 (3) and (4) of the same Act relate to the jurisdiction of magistrates to handle land matters while Section 9 (v) of the Magistrate's Court Act also grants magistrates power to deal with land matters, including adverse possession.
 16. Counsel submitted that, to attain uniformity, Section 38 (1) of the *Limitation of Actions Act* should not be construed as a limit to the jurisdiction of Magistrates since they are duly gazetted and have the requisite pecuniary jurisdiction as well as power to determine cases involving occupation of and title to land, including adverse possession, which is essentially a dispute on title to land; that such interpretation is in line with Article 259, which enjoins courts to interpret *the Constitution* in a manner that promotes its purposes, values and principles. As a consequence, counsel argued that the Magistrates court had the necessary jurisdiction to handle the primary suit that pertained to adverse possession.
 17. It was further submitted that the Judicial Review proceedings were time barred, and that the judicial decision resulting from exercise of judicial authority by judicial officers are not the subject of the *Fair Administrative Action Act*; that, therefore, the Judge had no jurisdiction to hear and determine the application and ought to have downed his tools the moment he made the determination that the application was time barred.



18. On their part, counsel for the 1st Respondent submitted that the 2nd Appellant did not lodge any notice on her own behalf and that, as a consequence, her appeal was incompetent, and that no orders issued against her were capable of being set aside.
20. Counsel submitted that the proceedings were not time barred, and that the application of Article 165(6) and (7) of *the Constitution* is not subject to the 6 months' period prescribed for filing; that the jurisdiction expressly conferred upon superior court judges to supervise subordinate courts cannot be subjected to statutory or regulatory restrictions or limitations on time lines, and that the Judicial Review proceedings were commenced on 4th January 2022 which was within 3 months of the publication of the notice and could not have been time barred under Order 53 of the Civil Procedure Rules or under the *Law Reform Act*; and that the trial Magistrate had no jurisdiction to handle a claim for adverse possession, and neither did the trial court have the pecuniary jurisdiction to hear and determine the suit given that the property in question was valued at Kshs. 55,000,000.00
21. It was also submitted that the learned Judge had a duty to determine the prayers for general, punitive and aggravated damages, but which issue was not addressed. Counsel prayed that the decision be affirmed and that the 1st Respondent be granted general, punitive and aggravated damages as prayed in the Notice of cross appeal.
22. This being a first appeal, it is the duty of this Court to re-analyze and re- assess the evidence on record and reach independent conclusions in the matter. This approach was adopted in *Arthi Highway Developers Limited vs. West End Butchery Limited & 6 Others* [2015] eKLR where the Court cited the case of *Selle vs. Associated Motor Boat Co.* [1968] EA 123 and held as follows:

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”
23. Having considered the appeal, the cross appeal, the evidence on record, the written and oral submissions by the parties, the case law cited and the law, it is clear that issues in the main are: whether the 1st Respondent’s Judicial Review application was time barred; whether the learned Judge was in error in proceeding to determine the application despite finding that the suit was time barred and incapable of determination under the *Fair Administrative Action Act*; whether the court rightly invoked its supervisory powers under Article 165 of *the Constitution*; and whether the 1st Respondent was entitled to an award of damages.
24. The 1st Respondent brought the application under Sections 8 and 9 of the *Law Reform Act*, Section 9 of the *Fair Administrative Action Act*, 2015 and Order 53 Rule 1 and 2 of the Civil Procedure Rules, 2010. The main contention was that the trial Magistrate had no jurisdiction to determine a suit for adverse possession, and that the value of the subject property exceeded the court’s pecuniary jurisdiction. The trial Magistrate was further faulted for issuing an order for substituted service without the filing of a formal application under Order 5 Rule 17, and that the provisional title issued to the 3rd Respondent was issued illegally without the rules on advertisement being followed.



25. With respect to the issue as to whether the application was time barred, the learned judge stated thus:

“Section 9(3) above is self-explanatory. Where it is a judgment in issue, the application for leave needs to be made no later than six months after the date of that judgment. In our case, the judgment was delivered on 30 June 2021. The application for leave thus needed to be made within six months of this date. It means it ought to have been filed at the latest on 30 December 2021. The motion hearing was filed on 5 January 2022. It was a few days out of time, but even one day out of time is still out of time”.

26. We agree and need say no more on the issue given that a computation of the period from the date of the Judgment, (and not the date of the decree, as alluded to in the 1st Respondent’s submissions), to the date of the application was filed clearly showed that the period exceeded the stipulated 6 months’ period for filing, thereby rendering it out of time.

27. But the matter does not end there as, having regard to the circumstances on which the application was founded, the learned Judge sought to invoke the court’s supervisory jurisdiction under Article 165(6) and (7) of *the Constitution* and held that:

In my opinion supervisory jurisdiction on the article 165(6) of the Constitution will be invoked by the court where the court identifies serious misdirection or error by the subordinate court which leads to a gross injustice for which the superior court must intervene so that justice is done. There are situations that cry and grown out for justice and it will be remiss for the court to close its ears to such cries. The court must rise up and see to it that justice is done in such occasions. Such instances may include failure by the supporting court to follow its own orders, or failure to follow substantial provisions of the law, which result in a gross violation of another person’s right, especially those contained in the Bill of Rights. I am also of the view that in order to invoke a supervisory jurisdiction the court can do so on its own motion or on being moved by a person including parties to the suit. However, the court ought to be slow to invoke its supervisory jurisdiction under article 165 (6) of *the Constitution* where there are other specifically provided mechanisms for redress.

28. At this juncture, the question that begs is whether the learned Judge rightly invoked the court’s supervisory jurisdiction over the subordinate courts.

29. The High Court is established under Article 165(1) of *the Constitution*. For the purposes of this case, the Environment and Land Court is established under Article 162 and has jurisdiction to determine, inter alia, any dispute relating to land and the environment. In view of its specialised jurisdiction, and being a court of equal status, it would follow that the supervisory jurisdiction provided under Article 165 (6) and (7) of *the Constitution* would equally be construed to extend to the courts of equal status and, for the purposes of this case, the Environment and Land Court. Further, Article 165(6) provides:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

Article 165(7) further provides:

For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”



30. What this means is that Article 165(6) and (7) endows the High Court and, by extension, the courts of equal status, with supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court. Essentially, the provisions empower superior courts to invoke their supervisory jurisdiction to ensure that subordinate courts remain within the bounds of their jurisdiction as by law prescribed and adhere to the fundamental principles of law. In cases where the subordinate court has assumed a jurisdiction which it does not have, the High Court and courts of equal status may exercise their supervisory jurisdiction to correct errors that pertain to the court's jurisdiction.

31. In invoking the court's supervisory jurisdiction, the learned Judge had this to say:

The court or not to fold its hands at such injustice. The conscience of this court does not allow it to stand by and see the applicant lose title based on a judgment made by a court with no jurisdiction, where she was never served with summons, where a provisional title was issued without her being made aware as required by law, and where there is an extremely suspicious transfer not backed by any sale agreement or any evidence of transfer of funds to support a sale. Nobody should lose title in circumstances such as those that have played out in this case. This is a court of justice and justice must be served to the applicant. Justice can only be served by notifying the entire proceedings of the case Mombasa CMCC E001 of 2021, quashing the judgment that ensued, cancelling the provisional title, and cancelling the purported transfer of title to the 3rd respondent and to the interested parties. If this court does not intervene, the applicant will lose her land under unsavoury circumstances”.

32. As observed above, the main reasons for which the learned Judge invoked the supervisory jurisdiction of the Environment and Land Court was, firstly, failure by the trial Magistrate's court to adhere to the court's pecuniary jurisdiction; secondly, the failure of the court to ensure that service of summons was properly effected on the 1st Respondent; thirdly, the issuance of a provisional title without the prescribed procedure being followed; and, fourth, the nonexistence of a proper sale agreement or evidence of transfer of funds to support the alleged sale of the land. In view of the anomalies identified, the serious misdirection and errors by the subordinate court, the learned Judge invoked the court's supervisory jurisdiction to avert a gross injustice and ensure that justice was done.

33. Turning first to the question of jurisdiction, it is trite that jurisdiction is everything and, without it, a court has no power to make any valid order. The requirement that a court or tribunal can only entertain a dispute where it has the requisite jurisdiction cannot be overemphasized. See the case of Lillian “S” vs Caltex Kenya Limited [1989] eKLR.

34. In the case of Republic vs Karisa Chengo & 2 Others [2017] eKLR, the Supreme Court held as follows:

By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics... where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”



35. In the case of Samuel Kamau Macharia & another vs Kenya Commercial Bank Ltd & another [2012] eKLR, the Supreme court stated:

(68) A court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law."

36. It is clear from the evidence adduced that, at the time of filing the suit before the Magistrates' court, the Appellants did not disclose the value of the subject property. In the application, the 1st Respondent produced evidence showing that the value of the subject property was way beyond the Kshs. 20 million pecuniary limit assigned to the trial Magistrate's court. It is also instructive that, when the subject property was to be sold to the 2nd and 3rd Respondents, the Government valuer placed the value for stamp duty purposes at Kshs. 40 million as of 20th December 2021. Given the value of the subject property, the suit filed before the Chief Magistrate's court was effectively placed outside the pecuniary jurisdiction prescribed by the provisions of Section 7 of the Magistrate's Courts Act, 2015. Clearly, the trial Magistrate's court lacked jurisdiction to hear and determine the suit. Accordingly, we find that the Judge rightly invoked the supervisory powers to intervene and find that the Magistrate's Judgment was null and void.

37. On the lack of service of summons on the 1st Respondent, it cannot be gainsaid that service goes to the root of the dictate of fair hearing.

38. In the case of County Assembly of Kisumu & 2 others vs Kisumu County Service Board of Kisumu [2015] eKLR, this Court held:

Due process is a fundamental aspect of the rule of law. Due process is the right to a fair hearing. The right to a fair hearing encapsulated in the audi alteram partem rule (no person should be condemned unheard) and founded on the well-established principles of natural justice, is not a privilege to be graciously accorded by courts or any quasi-judicial body to parties before them. As is clear from Articles 47 and 50 of our Constitution, it is a constitutional imperative."

39. The proceedings disclose a patent lapse in the service of summons on the 1st Respondent. This included failure by the trial Magistrates' court to order the filing of a formal application for leave to effect substituted service, and in granting such an order without reasons being advanced. There was also failure by the court to ensure that the substituted service was effected in the manner directed by the court. This is evident from the noncompliance with the court's order for the Appellants to publish the advertisement for substituted service in two newspapers, the Standard and the Daily Nation, instead of only the

40. Standard. The deficient service was further exacerbated by a misspelling of the title holder's name in the advertisement, where the name published was "Esther Gacheri Kirimi" instead of "Esther Gacheri Kirima". As rightly observed by the learned Judge, such misspelling of the title holder's name would mean that one Kirimi, and not the 1st Respondent was the focus of the advertisement with the result that service on the 1st Respondent was not properly effected.

41. In the case of Bouchard International Services Limited vs M'mwereria [1987] KLR 193, the Court held that:

The basis of approach in Kenya to the exercise of the discretion to be employed or rejected under either Rule 8 or Rule 10 (the latter dealing with judgement by default) is that if service



of summons to enter appearance has not been effected, the lack of an initiating process will cause the steps taken to set aside *ex debito justitiae*. If service of notice of hearing or summons to enter appearance has been served, then the court will have before it a regular judgement which may yet be set aside or varied on just terms. To exercise this discretion is a statutory duty and the exercise must be judicial. The court in doing so is duty bound to review the whole situation and see that justice is done. The discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error, but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.”

42. Similarly, this Court in the case of *Yooshin Engineering Corporation vs AiaArchitects Limited* (Civil Appeal E074 of 2022) [2023] KECA 872 (KLR) held that:

Where the judgement is irregular in the sense that service was not effected, or that the judgement was improperly or prematurely entered, then such a judgement is irregular and must be set aside as a matter of right. It does not matter whether the defendant has a defence or not. The defendant only needs to satisfy the court that the judgement was irregular and that is the end of the matter. The issue of imposing conditions does not arise”.

43. Once again, we find that, in disregarding the basic tenets of fair trial, the trial Magistrate failed to safeguard the 1st Respondent’s right to a fair hearing. Since service was not effected, no doubt, the ensuing judgment was irregular, and subject to be set aside as of right. We therefore find that, to avert injustice in these circumstances, the learned Judge rightly exercised the court’s supervisory jurisdiction to quash the Judgment and render it a nullity.
44. The same rationale would apply to the failure to follow the lawful procedure prescribed for advertisement for issuance of a provisional title, as well as the lapses that were evident in the transfer of the subject property to the 3rd and 4th Respondents. It therefore goes without saying that, the lapses in procedure rendered the ensuing title a nullity.
45. We think we have said enough to show that the jurisdictional and procedural lapses in the proceedings in the trial court, and subsequently thereto sufficiently mandated the learned Judge to invoke the Environment and Land Court’s supervisory jurisdiction under Article 165(6) of *the Constitution* to quash the trial Magistrate’s decision in the service of justice. On this basis, we have no reason to interfere with that decision.
46. Finally, as regards the claim for damages against the Appellants and the 4th Respondent, the 1st Respondent sought general, punitive and aggravated damages against the Appellants and the 4th Respondent. It was submitted that the learned Judge should have assessed the general, punitive and aggravated damages of Kshs. 3,850,000.00 representing less than 7% of the value of the subject matter for the period of more than 1 year when the 1st Respondent was kept away and is still kept away from her property.
47. We have gone through the proceedings before the learned Judge and find that they were canvassed in the 1st Respondent’s submissions, where reliance was on the remedies set out in Section 11(j) of the *Fair Administrative Action Act*. As seen above, the learned Judge held that since the impugned Judgment concerned a judicial decision, the *Fair Administrative Action Act*, was not applicable to the circumstances of this case. Since the learned Judge invoked the court’s supervisory jurisdiction under Article 165 (6) and (7) of *the Constitution*, and not Section 11(j) of the *Fair Administrative Action Act*, we find that the remedies thereunder were not available to the 1st Respondent. This ground is therefore without merit.



48. In sum, the Appeal is without merit and is hereby dismissed with costs to the 1st Respondent. The cross appeal partly succeeds, save that the claim for damages and declaratory orders against the 2nd to 5th Respondents is hereby dismissed. The cross appeal having succeeded in part, each party to bear their own costs.

It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 18TH DAY OF JULY, 2025.

A. K. MURGOR

.....

JUDGE OF APPEAL

DR. K. I. LAIBUTA CARB, FCIARB.

.....

JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

.....

JUDGE OF APPEAL

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

