



**Murithi v Ciomaroo (Environment and Land Appeal E031 of 2022)  
[2024] KEELC 3522 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3522 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E031 OF 2022**

**CK YANO, J**

**APRIL 11, 2024**

**BETWEEN**

**PETER MURITHI ..... APPELLANT**

**AND**

**VERONICA CIOMAROO ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. This appeal is against the judgment of Honourable Tito Gesora, C.M in Maua Chief Magistrate’s court Civil suit no. 278 of 2015 delivered on 2<sup>nd</sup> June 2022.
2. The respondent instituted the suit in the subordinate court against the appellant herein and the District Land Adjudication and Settlement Officer (DLASO) Igembe District vide a plaint dated 12<sup>th</sup> November, 2015 claiming to be the legal, rightful, and registered owner of land parcel No. 2122 Amungenti “A” Adjudication Section measuring 2 acres or thereabouts having been transferred to her by her husband Francis Mwambia. The respondent averred that at time the suit land was transferred to her, the same was developed and that she further developed it by planting various crops, fruits and trees.
3. The respondent averred that sometime on or about 27<sup>th</sup> October, 2015, the appellant in the company of a large gang without any colour of right or legal justification, forcefully and violently invaded the said land and destroyed the respondent’s bananas, trees and fence. That the appellant was arrested and charged in Maua SPM criminal case NO. 3705 of 2015.
4. The respondent further averred that sometime in the year 1996, she learnt that the appellant who had purchased land in a different area from the respondent’s husband measuring 0.50 acres had colluded with the office of the DLASO to fraudulently change the location of purchased land and moved it to the location where the respondent’s parcel is located due to its fertility and value. The respondent



stated that she raised a complaint and the appellant went back to his land and the respondent was assured that all would be well with her land.

5. The respondent averred that she came to learn that the appellant and DLASO illegally, corruptly, and fraudulently colluded to relocate the appellant's parcel which was in a hill and in an unproductive area and moved it to part of the respondent's land. The respondent enumerated the particulars of fraud and illegality on the part of the appellant and DLASO to be changing the map and location in respect of the respondent's land without her consent and taking away the respondent's land.
6. The respondent sought an order of permanent injunction against the appellant or anyone else acting at his behest from entering, interfering or in any other way dealing with the suit land, an order directing the DLASO to rectify the adjudication map in respect of the suit land, any other or better relief the court may wish to grant and costs of the suit and interest.
7. The appellant filed a statement of defence dated 16<sup>th</sup> November, 2015 which was amended on 3<sup>rd</sup> March 2016 wherein he denied the respondent's claim. It was the appellant's contention that his land parcel No. Amungenti "A" 3590 borders the suit land and averred that none of the two parcels has interfered with the existing boundaries as they were fixed in 1996. The appellant also pleaded that the trial court had no jurisdiction to adjudicate over the suit.
8. The appellant also raised a counter claim in which he averred that he was the actual and registered owner of land parcel No. 3590 Amungenti "A" Adjudication Section measuring 0.50 acres and which was well developed. That on 28<sup>th</sup> December, 2015, the respondent in the company of a group of people while claiming to be protected by a court order in the matter, illegally and violently entered the appellant's land and destroyed a fence valued at kshs. 70,000/= and crops valued at Kshs. 30,300/= . That the respondent and those others were charged in Maua C.M Criminal case No. 4110 of 2015. The appellant prayed for judgment against the respondent for Kshs. 100,300/=, general damages for illegal destruction of private property and costs and interest.
9. At the hearing, the respondent testified and called 3 witnesses including her husband. The appellant also testified and did not call any witness.
10. Upon considering the matter, the trial court found that the respondent had proved her case as required and dismissed the appellant's counterclaim. Being dissatisfied with the said judgment, the appellant lodged this appeal on the following grounds-;
  1. That the learned trial Magistrate erred in law in failing to appreciate that the respondent's case was essentially a challenge to the decision of the adjudication committee placing the appellant's land parcel Number 3590 Amungenti "A" adjudication section at Nkunene which is a matter falling within the jurisdiction of the various bodies created under Section 17, 18, 19 and 26 of the *Land Consolidation Act* and not the court. As a consequence, the court proceeded with the matter without jurisdiction.
  2. That the learned trial magistrate erred in law and fact in finding that the appellant's land parcel number 3590 Amung'enti "A" Adjudication Section had been placed on the respondent's land parcel number 2122 Amung'enti "A" Adjudication section when no demarcation plan had been produced by the respondent to show that.
  3. That the learned trial magistrate erred in law and fact in finding that the respondent's land parcel number 2122 Amung'enti "A" adjudication Section had been fraudulently reduced from 2 acres to 1.10 acres when no copy of the Record of Existing Rights had been produced to show that.



4. That the learned trial magistrate erred in law and fact in finding the appellant guilty of fraudulently altering the Demarcation Map when the particulars of fraud had not been proved to the required standards.
  5. That the learned trial magistrate erred in law in entering judgment for the respondent when she had not proved her case on a balance of probabilities.
  6. That the learned trial magistrate erred in law in totally ignoring the appellant's submissions particularly on the court's jurisdiction to deal with the matter.
  7. That the learned trial magistrate erred in law in granting orders of eviction when the same had not been sought by the respondent.
  8. That the learned trial magistrate erred in law in dismissing the appellant's counterclaim without evaluating the evidence and giving reasons for his decision.
11. The appellant prays for the appeal to be allowed and the judgment of the lower court to be set aside in its entirety and the respondent's suit be dismissed with costs and the appellant's counterclaim be allowed and judgment be entered for him with costs. The appellant also prays to be awarded the costs of this appeal.
  12. Pursuant to directions given by the court, the parties agreed to canvass the appeal by way of written submissions. The appellant filed his submissions dated 5<sup>th</sup> February, 2024 through the firm of Nkunja & co. Advocates while the respondent filed her submissions dated 16<sup>th</sup> February, 2024 through the firm of M/s Mutembei & Kimathi Advocates.

### **Appellant's Submissions**

13. The appellant's counsel gave a brief background of the matter and submitted that this being a first appeal, this court is bound to consider 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 allowances in this respect. The appellant's counsel relied on the case of *Gitobu Imanyara & 2 others Vs Attorney General* [2016] eKLR.
14. The appellant's counsel identified the following issues for determination-;
  - a) Whether the trial court had jurisdiction to hear the matter.
  - b) Whether the respondent's case was proved on a balance of probabilities.
  - c) Whether the court was right to issue eviction order.
  - d) Whether the trial court evaluated the evidence adduced in respect of the counterclaim.
  - e) Whether the trial court gave reasons for its decision to dismiss the appellant's counterclaim.
15. With regard to the first issue, it was submitted on behalf of the appellant that the trial court lacked jurisdiction to deal with the matter as the law provides a different specialized system of dealing with the issues in contention. The appellant's counsel referred to the pleadings and the consent letters issued to the respondent and to the appellant under Section 8(1) of the [Land Consolidation Act](#) and which were produced as P exh. 5 and D exh 8 and another letter dated 8<sup>th</sup> January, 2016 (D exh 7) that shows that as at that date, the process of adjudication was at the demarcation and surveying stage, and submitted that this means that any dispute as to any interest in land in the area should have been resolved under the mechanisms provided for under sections 17,18,19, 20 and 28 of the [Land Consolidation Act](#) and



not the court. The appellant's counsel relied on the case of Secretary County Public Service Board & another Vs Hulbhai Gedi Abdille [2017] eKLR and Phoenix E.A Assurance Company Limited Vs S.M Thiga t/a Newspaper Service and submitted on behalf of the appellant that having proceeded with the matter without jurisdiction the proceedings of the trial court including the judgment are a nullity and that this appeal should be allowed on this ground alone.

16. On whether the respondent's case had been proved to the required standards, the appellant's counsel referred to the evidence adduced at the trial court and submitted inter alia, that no demarcation plan was proved and no surveyor or any other officer from the Land Adjudication Department was called to confirm whether there had been any alterations on the demarcation plan prepared pursuant to Section 23(5) of the *Land Consolidation Act*. That the suit before the trial magistrate was an appeal in disguise against the decision of the land committee which is a breach of the *Land Consolidation Act* which sets out an elaborate process of resolving disputes arising from demarcation. The appellant relied on the case of Tobia Ochola Osidi & 13 Others Vs Cyprianus Otieno Ogalo & 6 others [2013] eKLR and Stephen Kirimi M'rinturi Vs Land Adjudication and Settlement Officer – Igembe District & 3 others, Peter Kumbu Kimunya & another (interested parties) [2020] eKLR and submitted that land parcel No. 3590 Amungenti "A" Adjudication Section is a product of the process of adjudication under the *Land Consolidation Act* and there was no evidence of fraud before the trial court. It was submitted on behalf of the appellant that the trial magistrate was wrong to order the removal of the appellant's parcel from the demarcation plan. It was further submitted that parties are bound by their pleadings and the respondent having not prayed for eviction orders, the trial court was wrong to issue such orders.
17. On whether the trial court evaluated the evidence adduced in respect of the counterclaim, it was the appellant's submission that the trial court being a court of justice, was entitled to evaluate the evidence adduced by the appellant in support of his counterclaim and give reasons for the decision arrived on it. The appellant cited Order 21 Rule 4 of the Civil Procedure Rules which requires that whenever a matter is contested, the judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for the decision. That the trial court's judgment did not meet these requirements at all as it only made reference to the counterclaim in its final orders. It was submitted on behalf of the appellant that this was a serious error of law that renders the judgment a nullity in law. The court was urged to allow the appeal with costs for both this appeal and the lower court.

### **Respondent's Submissions**

18. The respondent's counsel also gave brief facts of the case. On the issue of jurisdiction, it was submitted on behalf of the respondent that the respondent rightly instituted the suit before the trial court consent having been sought from the adjudication officer to file the same.
19. With regard to the issue of fraud, it is the respondent's submission that the same was duly proved, and pointed out that from all the documents and exhibits produced in the trial court, the land bought by the appellant Ithai/Amungenti/Akachiu/191 was at Ithai village as per the sale agreement. That the manner in which that land moved to the respondent's land in Nkunene can only be explained by the appellant and the lands office. That at no time did the respondent sell any portion of her land to the appellant.
20. It was also submitted on behalf of the respondent that there is already a judgment against the District Land Adjudication Officer which makes it clear that he conceded to the fact that there was fraudulent dealings in relations to the respondent's land. The respondent's counsel relied in HCC NO. 158 of 2008 Adan Hussein Ali & Rahima Dahir V Geoffrey Ndiku Natisya & A.H Hameed Traders.



21. It was also pointed out that the lower court visited the suit land and confirmed that the appellant had invaded the same and fenced besides the respondent's fence. That the respondent's husband who is now deceased also testified in the trial court and bolstered the respondent's case on the location of the land he sold to Gervasio who in turn sold it to the appellant and that the same was at Ithai while the respondent's land is in Nkunene. That other witnesses including the appellant's neighbours testified on behalf of the respondent with regard to the location of the appellant's land.
22. It was submitted that the respondent proved her claim and deserved protection in upholding her right to own property as enshrined in Article 40 of *the Constitution*. The respondent's counsel also cited Section 24 of the *Land Registration Act* No. 3 of 2012.

### **Analysis And Determination**

23. I have perused and considered the record of appeal, the grounds of appeal, the submissions filed and the authorities. This being a first appeal. I am conscious of the court's duty and obligation to evaluate, re-assess and re-analyse the evidence on record to determine whether the conclusions reached by the learned trial Magistrate were justified on the basis of the evidence presented and the law. The issues for determination in this appeal as I can deduce from the grounds of appeal are-;
  - (i) Whether the trial court had jurisdiction to deal with the matter.
  - (ii) Whether the respondent had proved her case to the required standard.
  - (iii) Whether the trial court was justified in granting orders of eviction
  - (iv) Whether the trial court dismissed the appellant's counterclaim without evaluating the evidence and without giving reasons for the decision.
  - (v) Whether the appeal is merited or not.
24. The appellant submitted that the trial court lacked jurisdiction to deal with the matter. It is the appellant's submissions that the dispute which concerned an interest in land in an area in which the process of adjudication was at the demarcation and surveying stage should have been resolved under the mechanisms provided for under Sections 17, 18,19,20 and 28 of the *Land Consolidation Act* and not the courts.
25. Jurisdiction is the soul of judicial work. A court cannot legitimately function without it. In *Owners of Motor Vessel "Lillian S" V Caltex Oil (Kenya) Ltd (1989) KLR 1 Nyarangi JA* stated that "Jurisdiction is everything... and a court lays down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."
26. The constitutional implication of this is that since the court is vested with authority to exercise on behalf of the people of Kenya the Court can only exercise the limited authority it has been vested with. Therefore, a court cannot by invention or innovation or craft its jurisdictional reach as this would amount to overreaching the mandate bequeathed by the people either through *the constitution* or by statute.
27. In *Samuel Kamau Macharia V KCB and others (2012] eKLR*, the Supreme Court stated as follows-;

"A court's jurisdiction flows from either *the constitution* or legislation or both. Thus, a court 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 ... The court



must operate within the constitutional limits. It cannot expand jurisdiction through judicial craft or innovation.”

28. In this case the appellant has submitted that the trial court did not have jurisdiction to adjudicate over the matter since there are mechanisms provided under the [Land Consolidation Act](#) in which the dispute should have been resolved through. Indeed, the appellant denied the trial court’s jurisdiction in his defence. From the pleadings, it appears that the process of adjudication was at demarcation and surveying stage, and the register had not been closed. However, both the respondent and the appellant produced consent letters issued under Section 8(1) of the [Land Consolidation Act](#).
29. Section 8(1) of the [Land Consolidation Act](#) provides as follows-;
- (1) Subject to the provisions of this section, no person shall institute and no court whatever shall take cognizance of, or proceed with or continue to hear and determine, any proceedings in which the ownership or the existence under native law and custom of any right or interest whatsoever in, to or over any land in an adjudication area is called in question or is alleged to be in dispute unless the prior consent in writing of the adjudication officer to the institution or continuance of such proceedings has been given.
30. My understanding of the above provisions of law is that one can only institute and a court can proceed with and determine a dispute over ownership of land in an adjudication area if the Land Adjudication Officer issues a consent. In this case, there is no dispute that the suit was filed by the respondent on 12<sup>th</sup> November, 2015. There is a consent letter dated 10<sup>th</sup> November 2015 (P exh 5) issued to the respondent by the Land Adjudication Officer under the provisions of Section 8(1) of the [Land Consolidation Act](#) (Cap 283 Laws of Kenya). In my opinion, the trial court had jurisdiction to deal with the matter since a consent had been issued to the respondent in compliance with Section 8(1) of the said Act. Similarly, a consent dated 8<sup>th</sup> January, 2016 (D exh 7) was also issued to the appellant. As such, the issue of jurisdiction does not arise since the parties had complied with the provisions of Section 8(1) of the [Land Consolidation Act](#) before instituting or continuing with the proceedings. It is therefore my finding that the trial court had jurisdiction to adjudicate over the matter.
31. The next issue for determination is whether the respondent had proved her case to the required standard. In the plaint, the respondent pleaded fraud and enumerated the particulars of fraud and illegality on the part of the appellant. It is trite law that any allegations of fraud, illegality and misrepresentation must be specifically pleaded and strictly proved. See *Arithi Highway Developers Ltd Vs West End Butchery Ltd & 6 others* [2015] eKLR and *Karia Kiarie & 2 others Vs Sammy Magera* [2018] eKLR. The question for this court to determine is whether the respondent presented sufficient evidence to prove the allegation of fraud as found by the trial court.
32. The respondent accused the appellant (and the District Land Adjudication and Settlement Officer) of changing the map and the location in respect of the respondent’s land without her consent and taking away the respondent’s land and giving it to the appellant.
33. From the material on record, it is clear that the appellant admitted in his evidence that the land he was entitled to is the one Gervasio bought from the respondent’s husband. The sale agreement (P exh 1) showed that the appellant purchased land in Ithai village. The respondent’s husband and other witnesses called by the respondent confirmed that Gervasio bought land in Ithai village from the respondent’s husband which he later sold to the appellant. The respondent’s land is at Nkunene village. There was no evidence presented by the appellant to show that he or the said Gervasio bought any land from the respondent’s husband at Nkunene. According to the exhibits produced, and in particular the sale agreement, the respondent’s husband sold land that was at Ithai village. I am persuaded that



the trial court correctly found that the land in Ithai and the respondent's land at Nkunene were two distinct parcels of land and the appellant had no right to enter and occupy the respondent's land. In my view, the learned trial magistrate was right in concluding that the respondent had proved her case to the required standard. Having analyzed the evidence and found in favour of the respondent, it is my view that the trial court was justified in dismissing the appellant's counterclaim. In my view, the trial court rightly addressed itself to all the issues in both the respondent's case and the appellant's counterclaim. My evaluation of the evidence on record is that the respondent succeeded in proving her claim against the appellant and her case was rightly allowed by the trial court. On the other hand, the appellant's counterclaim was rightly dismissed. Having found in favour of the respondent and having dismissed the appellant's counterclaim, it is my view that the trial court was justified in granting orders of eviction against the appellant. The respondent deserved protection of her right to property as enshrined in Article 40 of *the Constitution*.

34. Based on the evidence that was adduced before the subordinate court, it is my view that the learned trial magistrate was justified in arriving at the decision he made. The findings and holding by the learned trial magistrate were well founded and I find no basis to interfere with the same.
35. In the result, I find no merit in the appeal and the same is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT MERU THIS 11<sup>TH</sup> DAY OF APRIL 2024**

In the presence of

Court Assistant – Tupet

Ms Kiema holding brief for Kaberia for appellant

Ms Asuma holding brief for Mutembei for Respondent

**C.K YANO**

**JUDGE**

