



REPUBLIC OF KENYA



**Nguku v Kasimu & 5 others (Enviromental and Land Originating Summons  
E024 of 2022) [2024] KEELC 5701 (KLR) (24 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5701 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E024 OF 2022**

**A NYUKURI, J**

**JULY 24, 2024**

**IN THE MATTER OF IMPLIMENTATION OF THE MINISTER'S  
DECISION IN APPEAL NO. 55 OF 1986 WITH REGARD TO  
LAND PARCEL NO. 225 ITUMBULE ADJUDICATION SECTION**

**BETWEEN**

**PETER MANTHI NGUKU ..... PLAINTIFF**

**AND**

**KISANGAU KASIMU ..... 1<sup>ST</sup> DEFENDANT**

**NZANGI KASIMU ..... 2<sup>ND</sup> DEFENDANT**

**MUTIO KASIMU ..... 3<sup>RD</sup> DEFENDANT**

**MUTUKU KASIMU ..... 4<sup>TH</sup> DEFENDANT**

**MUSYOKA KASIMU ..... 5<sup>TH</sup> DEFENDANT**

**MUTUNGA KASIMU ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. The plaintiff instituted this suit against the defendants by way of originating summons dated 27<sup>th</sup> October 2022 seeking the following orders;
  - a. That the respondents herein be compelled to receive a sum of Kshs 2,100/= payable to their father Kasimu Kianga (deceased) as ordered by the Minister in Appeal Case No 55 of 1986 and in default the said sum be deposited in court.
  - b. That upon payment of the above stated sum of Kshs 2,100/=, in court, the Land Registrar Machakos County do register and issue title deed to land parcel Number Kibauni/



Itumbule/225 in the name of Nthitu Mutiso as per the Minister's decision dated 14<sup>th</sup> February 1986 in Appeal Number 555 of 1986.

- c. That costs of this application be borne by the Defendants
2. The summons is supported by the affidavit dated 27<sup>th</sup> October 2022 and sworn by Peter Manthi Nguku, the plaintiff. He deposed that the suit property was sold to Nthitu Mutiso by his late father Nguku Kyai and upon demarcation and/or adjudication, the same was registered in the name of the said Nthitu Mutiso. He further averred that an objection was filed against the registration by one Kasimu Kianga and the dispute was heard up to the Appeal stage before the District Commissioner as Appeal Case No 55 of 1986 (Kasimu Kianga v Martin Nguku & Nthitu Mutiso). The deponent outlined the outcome of the said Appeal which he alleged was determined on 14<sup>th</sup> February 1986 as follows;
    - a. The defendant Martin Nguku is fined Kshs 1,300/= for ignoring court orders.
    - b. Martin Nguku to refund the appellant Kasimu Kianga Kshs 350/= for each of the six cases on this land dispute - Total Kshs 2,100/= (Two Thousand One Hundred Shillings Only).
    - c. Nthitu Mutiso is allowed to retain parcel No 225 but no title deed be issued until conditions one (A) and (B) two above are fulfilled.
  3. He further deposed that the said Kasimu Kianga passed away before he could pay him Kshs 2,100/= as ordered by the Minister. He also averred that he paid the fine of Kshs 1,300/= as ordered and that the parties had been summoned by the District Land Adjudication and Settlement Officer of Machakos District towards implementation of the Minister's decision but the late Kasimu Kianga did not adhere to the summons.
  4. He claimed that on 5<sup>th</sup> December 2006, the Director of Land Adjudication and Settlement wrote to the District Land Adjudication and Settlement Officer of Machakos District, seeking facilitation towards implementation of the Minister's order. It was his averment that he had made all efforts to have the defendants collect the said sum of Kshs 2,100/= as beneficiaries of the late Kasimu Kianga to no avail, and even sought intervention of the county administration.
  5. It was the deponent's contention that the honourable court has the power to grant the orders sought which will in turn enable the director of Land adjudication and settlement implement the Minister's order and eventual issuance of the title deed to the title number 225 Itumbule Adjudication Section to Nthitu Mutiso.
  6. The summons are opposed. The 1<sup>st</sup> defendant, Asuman Kisangau Kasimu, with the authority of the other defendants swore a replying affidavit dated 24<sup>th</sup> May 2023. He averred that the plaintiff is a stranger to them and that neither the defendant nor his late father bought any land from the defendant's father Kasimu Kianga. He averred that the plaintiff's claim over the suit land against Nthitu Mutiso was a fraud perpetuated by the duo, and which fraud did not succeed. He further averred that the land title number Kibauni/Itumbule/225 belongs to their father and that the succession thereof has not been done.
  7. It was the respondent's contention that they were not willing to cede their late father's land to the plaintiff who was seeking to enforce a non-existent contract. It was also his averment that the plaintiff's claim is not enforceable in law as the respondents are not the registered title owners. He further argued that the claim offends provisions of the *Limitation of Actions Act* Cap 22 Laws of Kenya since the Minister's decision was made in 1986.



8. The parties proceeded by way of written submissions. On record are the plaintiff's submissions dated 11<sup>th</sup> July 2023 and the defendant's submissions dated 27<sup>th</sup> October 2023.

### **Plaintiff's submissions**

9. Counsel for the plaintiff submitted that it was clear from the respondents' replying affidavit that they were not willing to comply with the Minister's decision, and that they were disputing the said decision which is final under Section 29 (1) of the *Land Adjudication Act*. Counsel argued that Section 4 (4) of the *Limitation of Actions Act* was applicable in the circumstances of this case as the defendants had defaulted and continue to default despite the minister making an order for payment of money. Counsel argued that this court should not sit on appeal of the minister's decision as that would contravene Section 29 of the *Land Adjudication Act* and that the plaintiff was seeking for orders of enforcing that decision. Counsel maintained that the suit was not seeking determination of ownership of the suit property.

### **Defendants' submissions**

10. Counsel for the defendant submitted that the plaintiff did not take any steps to enforce the Minister's decision which was made in 1986 which is a period of 36 years. Counsel argued that the plaintiff's suit offends the provisions of Section 7 of the *Limitation of Actions Act*. It was further argued for the defendants that Section 4 (4) of the *Limitation of Actions Act* cannot cure the incompetency of the plaintiff's suit because even the said section provides for a period of 12 years for enforcing judgments. Counsel argued that as the suit property was registered in the name of Kasimu Kianga deceased, yet the suit was filed against persons who are not the registered proprietors thereof. In addition, counsel argued that even the plaintiff is not the administrator of the estate of his late father Manthi Nguku and that as the parties herein are not administrators of their fathers respectively, this suit is a non starter. They urged the court to dismiss the suit.

### **Analysis and determination**

11. The court has carefully considered the originating summons, the supporting affidavit, the replying affidavit as well as parties' respective submissions. The issues that arise for determination of this court are whether the court has jurisdiction to grant the orders sought and whether the plaintiff is entitled to the orders sought.
12. Jurisdiction is the power of the court, tribunal or any other body to determine a matter. Jurisdiction is derived from the *Constitution* or statute or both and no court or tribunal can arrogate itself the jurisdiction it does not have.
13. In the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Ltd & others* [2012] eKLR, the Supreme court held as that a court's jurisdiction flows from the *Constitution* or statute or both, and a court ought not confer on itself jurisdiction it does not possess.
14. Jurisdiction is everything and a court ought first to satisfy itself that it has jurisdiction to determine a matter before embarking on its determination. In the case of *Owners of the Motor Vessel Lillian S v Caltex Oil (Kenya) Ltd* [1989] it was held as follows;

Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that 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 judgment is given.

15. In the instant matter, it is not disputed that the suit property was subject to an adjudication process. The plaintiff herein has now moved the court under Section 29 of the [Land Adjudication Act](#) asking the court to grant the prayers sought in the originating summons arguing that he is seeking that this court implements the decision of the Minister.
16. Section 29 of the [Land Adjudication Act](#) provides as follows;
  1. Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by—
    - a. delivering to the Minister an appeal in writing specifying the grounds of appeal; and
    - b. sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.
  2. The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.
  3. When the appeals have been determined, the Director of Land Adjudication shall—
    - a. alter the duplicate adjudication register to conform with the determinations; and
    - b. certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.
  4. Notwithstanding the provisions of section 38(2) of the [Interpretation and General Provisions Act](#) (Cap. 2) or any other written law, the Minister may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public office by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Minister.
17. Therefore, upon hearing an appeal, the Minister's decision is final. It is this final decision that is sent by the Minister to the Director of Land Adjudication and to the Chief Land Registrar for implementation. Upon receipt of the decision of the Minister, the Director of Land Adjudication is under obligation to alter the duplicate adjudication register to conform with the determination and certify on the said register that it has become final in all respects, and thereafter send the details of the alterations and a copy of the certificate to the Chief Land Registrar, who then alters the adjudication register accordingly.
18. It is therefore clear that the implementation of the Minister's decision lies with the Director Land Adjudication and the Chief Land Registrar. This court has no role in that implementation. The plaintiff has not shown this court any legal provision that empowers this court to implement the Minister's decision and certainly, section 29 of the [Land Adjudication Act](#) which is the basis of the plaintiff's suit, does not at all clothe this court with such jurisdiction. That provision is clear that it is the Director of Land Adjudication and the Chief Land Registrar that are mandated in law to act on the Minister's decision, which decision is final.



19. In the premises, I find and hold that this court has no jurisdiction to implement the Minister's decision as sought by the plaintiff or at all and therefore, I find and hold that this suit is incurably incompetent and the same is hereby struck out for want of jurisdiction with costs to the defendants.

20. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 24<sup>TH</sup> DAY OF JULY 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.**

**A. NYUKURI**

**JUDGE**

In the presence of:

Mr. Mbindyo for plaintiff

No appearance for defendants

Court assistant – Josephine

