



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Chege & 8 others v Mwangi & 2 others (Environment and Land Appeal E090 of 2022) [2024] KEELC 5847 (KLR) (22 August 2024) (Ruling)

Neutral citation: [2024] KEELC 5847 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E090 OF 2022

BM EBOSO, J
AUGUST 22, 2024

BETWEEN

SAMUEL KARIUKI CHEGE 1ST APPELLANT
EDWARD WANJAGI NDUNGU 2ND APPELLANT
HENRY KIMANI WATHIRU 3RD APPELLANT
LILIAN WANJA MBURU 4TH APPELLANT
VIRGINIA NJERI NDUNGU 5TH APPELLANT
PETER KAMAU THUO 6TH APPELLANT
MARGARET WARUGURU KANYIRA 7TH APPELLANT
MATIAS NDONGA KABIRU 8TH APPELLANT
JOHN MURIITHI MBARIRE 9TH APPELLANT

AND

NG'ANG'A MWANGI 1ST RESPONDENT
DISTRICT SURVEYOR - RUIRU 2ND RESPONDENT
DISTRICT LAND REGISTRAR - RUIRU 3RD RESPONDENT

*(Being an Appeal against the Judgment of Hon. C.K. Kisiangani,
Senior Resident Magistrate, delivered on 22nd September, 2022 in
Ruiru Senior Principal Magistrate Court Civil Case No 429 of 2019)*



RULING

1. On 20/4/2023, the appellants brought a notice of motion dated 19/4/2023 seeking the following verbatim order:
 - “b. That this Honourable Court be pleased to admit the Judgment of Hon. Lady Justice Kemei J delivered on 13th February 2023 as part of the Appellants’/ Applicants’ submissions”
2. Upon hearing and considering the application, this Court [Eboso J] rendered a ruling on the application on 7/12/2023 and disposed it in the following verbatim terms:
 - “3. I have reflected on the application as framed. The applicants invite this court to admit the Judgment rendered by Kemei J on 13/2/2023 “as part of the appellants’ submissions”. An appeal in this court is determined on the basis of the record of appeal, the original record of the lower court, and the legal arguments [submissions] that parties tender. The record of appeal filed in this court is supposed to be a replica of the original record of the trial court in terms of pleadings, proceedings, evidence and determination.
 4. The Judgment which the appellants want to be admitted as submissions is not part of the appellants’ legal arguments [submissions]. It is additional evidence which the appellants want the court to look at and consider. It can therefore only be admitted as additional evidence under Section 78(1)(d) of the Civil Procedure Act as read together with Order 42 rules 27, 28 and 29 of the Civil Procedure Rules. That, however, is not the jurisdiction which the appellants have invited the court to exercise.
 4. For the above reasons, the court finds that the notice of motion dated 19/4/2023 is incompetent. The motion is hereby struck out. The appellants have the liberty to properly invoke the court’s jurisdiction under Section 78(1) (d) of the Civil Procedure Act and Order 42 rules 27, 28 and 29 of the Civil Procedure Rules. Costs of the application shall be in the appeal.”
3. Subsequent to that, the appellants brought another notice of motion dated 18/12/2023, seeking the following verbatim order:
 - “b. That this Honourable Court be pleased to admit the Judgment of Hon. Lady Justice Kemei J delivered on 13th February 2023 as part of the Appellants’/ Applicants’ submissions”
4. It is clear from the verbatim reliefs/prayers reproduced above that the order sought in the application dated 18/12/2023 is an exact replica of the order that was sought in the preceding application dated 19/4/2023. I am not sure the appellants read and understood this court’s ruling rendered on 7/12/2023. If they did, they are now engaged in an abuse of the process of the court.
5. For the reasons that are contained in the preceding ruling rendered by this court on 7/12/2023, reproduced in paragraph 2 of this ruling, the application dated 18/12/2023 is hereby struck out. The appellants shall bear costs of the application.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 22ND DAY OF
AUGUST 2024**

B M EBOSO

JUDGE

In the Presence of: -

Ms. Wanjiru for the 1st Respondent

No appearance for the Appellant

Court Assistant: Melita

