



**Chirao & 2 others v Mwangolo & 2 others (Environment & Land Case E023 of 2024) [2024] KEELC 13206 (KLR) (13 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13206 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E023 OF 2024  
EK MAKORI, J  
NOVEMBER 13, 2024**

**BETWEEN**

**MORRIS MWALIMU BASHA ..... 1<sup>ST</sup> PLAINTIFF  
WILLIAM CHIRAO BASHA ..... 2<sup>ND</sup> PLAINTIFF  
ISMAEL MNYAMBU CHIRAO ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**MANGO MWANGOLO ..... 1<sup>ST</sup> RESPONDENT  
MDOE TUNGWA ..... 2<sup>ND</sup> RESPONDENT  
JIRA TSUMA JIRA ..... 3<sup>RD</sup> RESPONDENT**

*(Appeal arising from the Ruling delivered by Hon. N. Chepchirchir delivered on the 30th day of August 2023 in Marikani Principal Magistrate ELC No. E003 of 2021 – Mdoe Tungwa & 2 others v Morris Mwalimu & 2 others)*

**JUDGMENT**

1. This is an interlocutory appeal challenging the decision (Ruling) of Hon. N. Chepchirchir, delivered on the 30th day of August 2023, dismissing an application dated 10<sup>th</sup> May 2023.
2. That application sought to have Mwavumbo Group Ranch joined as a party in the suit before the Lower Court. The suit stayed pending the determination of the Defendants/Appellants' appeal lodged at Mwavumbo Group Ranch, and Mwavumbo Group Ranch directed to fix the pending appeal before it for hearing and determination—the defendants' pending appeal there directed to be finalized.
3. The appeal was canvassed by way of written submissions at the behest of the Court.
4. The Appellant filed their submissions. The Respondents did not.



5. The role of this Court at this stage, although this is an appeal from interlocutory proceedings in the Lower Court, is to re-evaluate the evidence and make its independent conclusion. In the often-cited case of *Okeno v Republic* [1972] EA 32 at 36, the East Africa Court of Appeal stated the duty of the Court on a first appeal as follows:

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya v. R.*, [1957] E. A. 336) and to the appellate court’s own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (*Shantilal M. Ruwala v. R.*, [1957] E.A. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court’s findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate’s findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see *Peters v. Sunday Post*, [1958] E. A. 424.”

6. The Appellants, in submissions, believe that the Trial Court misdirected itself by failing to promote alternative dispute resolution mechanisms by diverting the matter to the Mwavunbo Group Ranch. and that the Trial Court failed to appreciate that the suit property fell within an adjudication section and should have downed tools for want of jurisdiction.
7. I have evaluated the materials placed before the learned Magistrate and the conclusion and final verdict. In her decision after hearing parties and considering their submissions, the Magistrate concluded:

“I have carefully considered the application dated 10<sup>th</sup> May 2023 together with the replying affidavit by the 1<sup>st</sup> Respondent and the submission by both parties. The applicant seeks to enjoin Mwavumbo Group Ranch as an Interested Party in the suit as it is said to hold the title to the land in the trust of its members and there is an appeal pending before them. The applicant also asked the court to down tools as the suit land is under adjudication, and Section 30 of the [Land Adjudication Act](#) was not complied with.

I agree with counsel for the respondent that the grounds relied on by the applicant do not make out a case for a party to be enjoined in the suit. The issues sought to be clarified by the Interested Party can be ventilated if they are called as witnesses and not enjoined as an Interested Party. That prayer lacks merit and is dismissed.

As to whether this suit should be stayed pending appeal before Mwavumbo Group Ranch, again I agree with counsel for the Respondent that it is only the High Court that can stay a suit pending before a court.

Does the court have jurisdiction to hear and determine this matter?

The answer is in the affirmative. Nothing has been presented before the court to show that the suit land is under Adjudication. A group Ranch, under the law, is not mandated to conduct an adjudication process. There is a well laid down procedure on the same under the [Land Adjudication Act](#).

The result is that application dated 10<sup>th</sup> May 2023 lacks merit and is dismissed. Costs shall abide in the outcome of the main suit.”

8. Looking at the grounds of appeal and the reasoning by the learned Magistrate, I see nothing to warrant the stay of proceedings before the Lower Court. She directed herself well on the joinder of parties. She



found that Mwavumbo Ranch was not a necessary party in the suit but could be called as a witness. She also correctly found that the appeal (sic), pending before a third party other than an adjudicative body – could not warrant a stay of proceedings before her. Besides, nothing shows that the matter was pending under Adjudication and that Section 30 of the *Land Adjudication Act* was applicable before her.

9. The Appellants wanted the matter referred to another third party for adjudication. That is okay—but not in the manner sought in the application before the Magistrate.
10. Application dated 2<sup>nd</sup> day of July 2024 dismissed with costs to the Respondents.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 13<sup>TH</sup> DAY OF NOVEMBER 2024 IN THE ABSENCE OF ALL THE PARTIES WHO WERE AWARE OF THE DELIVERY DATE.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Happy: Court Assistant

