



**Nganga v Nganga (Environment and Land Appeal E001 of 2024)  
[2024] KEELC 14120 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 14120 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND APPEAL E001 OF 2024  
A OMBWAYO, J  
DECEMBER 20, 2024**

**BETWEEN**

**DANIEL NDUNGU NGANGA ..... APPELLANT**

**AND**

**JOSEPH MBUGUA NGANGA ..... RESPONDENT**

*(appeal arising from the ruling of Honourable M.K.N Maroro, Principal Magistrate delivered on 20th December, 2016 in Nakuru Chief Magistrate Civil Case No. 325 of 2013.)*

**JUDGMENT**

1. This is an appeal arising from the ruling of Honourable M.K.N Maroro, Principal Magistrate delivered on 20th December, 2016 in Nakuru Chief Magistrate Civil Case No. 325 of 2013. The Appellant filed a Memorandum of Appeal dated 6th February, 2017 appealing against the said judgment in Nakuru High Court Civil Appeal No. 14 of 2017 which was later transferred to his court vide a ruling delivered on 1st July, 2024 by Lady Justice P. Gichohi. The appeal was on the following grounds:
  1. That the learned trial magistrate lacked the requisite jurisdiction to determine the matter.
  2. That the Trial (sic) learned Magistrate misdirected herself and apparently erred in law when she delivered her judgment without jurisdiction.
  3. That the learned trial Magistrate erred in law and fact by failing to state concise statement of the case, the points for determination, the decision thereon and the reasons for her findings as required by the law.
  4. That the learned trial magistrate erred in law and fact by failing to state her finding or decision, with the reasons therefore, upon each separate issue, having been framed as required by the law.
  5. That her decision was arrived at a consideration based on wrong principles of law.



2. The Appellant seeks orders setting aside the trial court's judgment in Nakuru CMCC No. 325 of 2013 and that it proceeds from where it had reached upon being clothed with the jurisdiction.

### **Brief Facts**

3. The Appellant had filed a suit vide a plaint dated 24th April, 2013 against the Respondent in which he sought for an eviction order against the Respondent and his agents from his suit property Bahati/Bahati Block 1/685. The Respondent filed a Statement of Defence dated 16th March, 2015 where he denied the allegations in the plaint. He averred that the Appellant held the suit land in trust for the family of Philis Wanjiru alias Philis Njeri (deceased), mother of both the Appellant and Respondent.
4. The trial court in its judgment delivered on 20th December, 2016 dismissed the Appellant's case with no orders as to costs.
5. The Appellant being dissatisfied with the judgment lodged the instant appeal which was canvassed by way of written submissions.

### **Submissions**

6. Counsel for the Appellant filed his submissions dated 18th January, 2024 where he gave a background of the case and identified two issues for determination. The first issue was whether the trial court at the time of hearing and delivery of judgment had jurisdiction to try the suit. He submits that at the time of filing the case on 16th May, 2013, the Magistrates court lacked the jurisdiction to hear and determine the case. He further submits that in 2015, the Environment and *Land Act* was amended and conferred the Magistrates court with the authority to hear and determine land matters. Counsel submits that the proceedings from the time of filing the suit until the time of amendments in 2015 were null and void for want of jurisdiction. He cited the case in Constitutional Petition No. 3 of 2016, Malindi Law Society V Attorney General & 4 Others which stayed the Magistrate's court jurisdiction on land disputes and submitted that the trial court lacked the jurisdiction to hear and determine the suit at the material time. He went on to submit that the Malindi Law Society Case (supra) was set aside in 2017 giving magistrates the jurisdiction in land matters. Counsel submits that the judgment in CMCC No. 25 of 2013 had been delivered prior to the said determination. He submits that the trial court lacked jurisdiction from the time the suit was filed until when the court delivered its judgment.
7. The second issue was whether the judgment dated 20th December, 2016 was a sound and lawful judgment. He submits that the judgment dated 20th December, 2016 did not comply with the requirements in Order 21 rule 4 of the Civil Procedure Rules as the same only reiterated the testimonies of the witness and dismissed the suit without a rationale behind the decision. He urges the court to set aside the judgment and he proceeds from where it had reached.
8. Counsel for the Respondent filed his submissions dated 19th February, 2024 where he identified two issues for determination. The first was whether the trial magistrate lacked jurisdiction to determine the matter. He submits that the suit proceeded between July and November, 2015 and that by the time the interim orders were issued on 14th March, 2016, the trial court had already concluded and the only remaining part was delivery of judgment. Counsel relied on the case of Mbogo & Another V *Kimani (Appeal 4 of 2018)* [2022] KEELC 3784 (KLR) and submits that neither of the advocates disputed the court's jurisdiction to deliver the judgment in the matter. He adds that the Appellant freely took part in finalization of the matter and therefore he should be estopped from claiming that the court lacked jurisdiction to deliver its judgment. He adds that the trial court was not put to task to decide on the issue of jurisdiction to warrant the same to be a ground of appeal. He relied on the Court of Appeal case of George Owen Nandy V Ruth Watiri Kibe [2016] eKLR and Republic V Tribunal of Inquiry



to Investigate the Conduct of Tom Mbaluto & others Ex parte Tom Mbaluto [2018] eKLR. Counsel submits that the magistrate's court jurisdiction was affirmed and that the Appellant was not prejudiced in any way during hearing or when judgment was delivered.

9. The final issue was whether the trial court failed to give reasons for the decision and arrived at her decision based on the wrong principles of law. He submits that grounds 2, 4 and 5 of the appeal are unfounded since the trial magistrate outlined the case, the issue in question and gave reasons for the determination. He further submits that the mere fact that the judgment was short did not mean that it did not have the required elements to be a valid judgment. Counsel also submits that the fact that the Appellant filed a statement of issues did not bar the trial court from deducing his issues as per the evidence in court. He cited the Supreme Court case in Richard Nyagaka Tong'i V Chris Munga N. Bichage & 2 Others [2015] eKLR and submits that the trial court's judgment captured all the required elements. He urges the court to dismiss the appeal with costs.

### **Analysis and Determination**

10. Having considered the court record, memorandum of appeal and the issues set out by the parties' submissions, the following issues are for determination:
  1. Whether the trial court had jurisdiction to determine the suit.
  2. Who should bear the cost of the appeal.
11. Being a first appeal, this court relies on a number of principles as set out in *Selle and another V Associated Motor Boat Company Ltd and others* [1968] 1 EA 123:

“...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 ...”
12. In the case of *Owners of the Motor Vehicle M.V. Lillians versus Caltex Oil (Kenya) Limited* (1989) KLR1. Nyarangi JA (as he then was) held as follows:

“...Jurisdiction must be acquired before judgment. It is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Facts constitute the evidence before the court...The moment a court determines that it has no jurisdiction it has to down its tools and proceed no further”
13. The judge further remarked as follows:

“...I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it.”
14. It is not in dispute that the suit was filed on 16th May, 2013. It is also not in dispute that the trial court heard the matter between 29th July, 2015 and 18th November, 2015 after which it delivered its judgment on 20th December, 2016.



15. In *Jane Wanjiku Wambu v Anthony Kigamba Hato, Stephen Njenga Hato, David Ngigi Hato (All t/a As Pafe Enterprises) & Hato Holdings Limited* [2017] KEHC 398 (KLR) Ngugi J held as follows:

“Parties are, therefore, expected to raise the issue of jurisdiction at the earliest opportunity.

However, since jurisdiction goes to the question of judicial authority to decide a matter on its merits, our Courts have been consistent that the issue of the issue of jurisdiction can be properly raised by a party at any stage – including on appeal.”

1. In the case of *Dubai Bank Kenya Limited V Kwanza Estates Limited* [2015] KECA 633 (KLR) the court cited with approval the case of *Floriculture International Ltd V Central Kenya Ltd & 3 Others* (1995) eKLR which held that the issue of jurisdiction could be argued at any time.
16. It is not in contention that Parliament enacted the Statute Law (Miscellaneous Amendments) Act, 2015 [Act No. 25 of 2015](#) that received Presidential assent on 15th December, 2015. The said Act clothed the Magistrate courts with the powers to hear and determine disputes relating to the environment, the use and occupation of and title to land. It is noteworthy that prior to the assenting of the said Act, the magistrate court did not have the requisite jurisdiction to hear land disputes. It was not until the High Court in *Malindi Law Society V Attorney General, Chief Justice and President of the Supreme Court of Kenya, Law Society of Kenya, National Land Commission & National Assembly* [2016] KEHC 1491 (KLR) vide its judgment delivered on 11th November, 2016 declared that Section 2 of the said Statute Law (Miscellaneous Amendments) Act, 2015 [Act No. 25 of 2015](#); Sections 7(3), 8(d) and 26(3) and (4) of the ELC Act and Sections 9(a) and (b) of the Magistrates Court Act, 2015 was inconsistent with Article 162(2) of [the Constitution](#) and thus null and void. The said decision took away the Magistrates’ powers to hear and determine land matters. The High Court decision was again set aside by the Court of Appeal in its judgment delivered on 19th October, 2017 giving them the jurisdiction to hear and determine land matters.
17. The Appellant filed the instant appeal on 7th February, 2017 before the High Court in Civil Appeal No. 14 of 2017 wherein the court in its judgment delivered on 1st July, 2024 transferred the matter to this court.
18. It is this court’s view that it is a fact that from the time the suit was filed to when the trial court heard the matter, it did not have the requisite jurisdiction to handle the same. In addition, at the time the trial court was delivering its judgment on 20th December, 2016, the High Court had given its judgment 11th November, 2016 declaring Section 2 of the said Statute Law (Miscellaneous Amendments) Act, 2015 [Act No. 25 of 2015](#) null and void. It therefore meant that the trial court lacked the jurisdiction to hear and determine the matter.
19. Consequently, I find that the appeal merited and the same is allowed as prayed. The upshot of the foregoing is that the ruling by the trial court dated 20th December, 2016 is hereby set aside. It is so ordered.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA.**

**NAKURU ENVIRONMENT AND LAND COURT**

