



Changawa & 5 others v Nzai & 7 others (Environment and Land Appeal E004 of 2024) [2024] KEELC 14048 (KLR) (17 December 2024) (Judgment)

Neutral citation: [2024] KEELC 14048 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL E004 OF 2024
EK MAKORI, J
DECEMBER 17, 2024**

BETWEEN

**JOHNSON KAZUNGU CHANGAWA 1ST APPELLANT
JUMWA CHANGAWA NZAI 2ND APPELLANT
OSCAH MUMO NZANAH 3RD APPELLANT
PHYLIS NJIRA KIMERA 4TH APPELLANT
PATRICIA KATSULYLA MUMO 5TH APPELLANT
BRIAN NZANAH MUMO 6TH APPELLANT**

AND

**CHARO CHANGAWA NZAI 1ST RESPONDENT
FESTUS KARISA CHANGAWA 2ND RESPONDENT
KATANA CHANGAWA NZAI 3RD RESPONDENT
KAHONZI CHANGAWA NZAI 4TH RESPONDENT
THE LAND ADJUDICATION & SETTLEMENT OFFICER KILIFI
COUNTY 5TH RESPONDENT
THE LANDS OFFICER - KILIFI COUNTY 6TH RESPONDENT
MINISTRY OF LANDS AND PHYSICAL PLANNING- ARDHI HOUSE
NAIROBI 7TH RESPONDENT
THE HON ATTORNEY GENERAL - MALINDI COMPLEX . 8TH RESPONDENT**

*(This is an appeal from the Ruling delivered by Hon. S.N Kimani (PM)
on 19th December 2023 in CMELC NO. E001 of 2023 Mariakani)*



JUDGMENT

1. The Appellants, dissatisfied with part of the ruling of Hon. M.S Kimani (PM) Mariakani delivered on 19th December 2023, have raised four key grounds of Appeal. These grounds primarily challenge the court's jurisdiction and the application of the [Land Adjudication Act](#).
 - a. The Learned Magistrate erred in Law by failing to appreciate the statutory dispute resolution methods provided for under Section 29 of the [Land Adjudication Act](#).
 - b. The Learned Magistrate erred in Law and failed to acknowledge that the Respondents failed to exhaust the resolution methods provided under Section 29 of the [Land Adjudication Act](#) before seeking recourse in Court.
 - c. The Learned Magistrate erred in Law by failing to appreciate that the Court lacked jurisdiction to entertain and/or adjudicate over the suit vis a vis Section 29 of the [Land Adjudication Act](#).
 - d. The Learned Magistrate erred in law and, in fact, by dismissing the Appellant's preliminary objection on the ground that the adjudication process was no longer ongoing.
2. The preliminary objection in the Lower Court raised four grounds, mainly that the application and the suit offended Section 29 of the [Land Adjudication Act](#) and that the court lacked jurisdiction to entertain and/or adjudicate over the suit.
3. The appeal is opposed. The Court directed parties to file written submissions, which they complied with. From the materials placed before me, I frame the issues for this Court's decision as whether the preliminary objection raised in the Lower Court ought to have been sustained and who should bear the costs of this appeal and those in the Lower Court.
4. This court's role at this point is crucial, as it involves re-evaluating the evidence and making 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. This thorough re-evaluation ensures the fairness and accuracy of the decision-making process, providing reassurance to all parties involved.

“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.”

5. In handling the appeal, I noticed that the issue raised in the preliminary objection before the Lower Court was whether, after the adjudication process had been concluded, the Lower Court had jurisdiction to reopen the case and rectify ostensibly mistakes committed during the process.



6. The court's jurisdiction is paramount. Without it, the Court cannot proceed further but down tools. As held by Nyarangi JA in Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR, the Court must have jurisdiction to act:

"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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction." This respect for jurisdiction ensures that the Court operates within its legal boundaries, instilling confidence in the legal process (emphasis supplied).

7. The Appellants submit that the Magistrate did not have jurisdiction to entertain the matter insofar as it purported to reopen what had already been concluded under the adjudication framework. There ought to have been either an appeal to the Minister or, thereafter, a judicial review application to the ELC.

8. The Respondent believes that the adjudication process has been concluded, and the Court has jurisdiction to order the register re-corrected if a mistake is disclosed.

9. Looking at the pleadings before the Magistrate significantly, the amended complaint paragraphs 14C:

"The Plaintiff aver that the following mistakes occurred Particulars of mistake

- a. A finding that in regards to Objection 15 and 16 in the nature of inclusion was done in error as Kilifi/Mwanda/Mbalamweni/2789 was legally bought by using money got from the dowry payment of Kadzo Changawa Nzai (the 1st daughter of the 4th Plaintiff)
- b. Objection 15 and 16 failing to find that the sub-division ought to have been only in regard to Kilifi/Mwanda/Mbalamweni/2726 which is family land."

10. The Trial Court on the issue of the adjudication process vis-a-vis the jurisdiction of the Court made a finding as follows:

"To my mind, the way things appear here is that the plaintiffs herein are contesting the legality or correctness of the process of the adjudication process, which ended up with registration of the properties in the name of the 7th -10th defendants, which they assert to have been a mistake. As regards whether that is true or otherwise remains a matter that cannot be decided at the preliminary stage."

11. The *Land Adjudication Act*, Chapter 284 Laws of Kenya, deals with the ascertainment of rights and interests of parties in an Adjudication Section and provides an elaborate adjudication mechanism. The proceedings from the Lower Court indicate that we are dealing with a process under the *Land Adjudication Act*, and the Court was asked in the complaint to rectify mistakes made during adjudication. Parties agree that the matter was adjudicated in the stages provided by the Act.

12. Section 30 of the Act ousts the jurisdiction of the Courts in this manner:

"Staying of land suits

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- (1) Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29(3) of this Act.”

13. Section 26 of the Act provides for the steps upon which a person aggrieved with the adjudication register is to appeal as follows:

“Objection to adjudication register

- (1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.”

14. Appeals arising from an objection are provided under Section 29 of the Act thus:

“Appeal

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.”

15. The ELC and the Superior Courts have provided the interpretations of the above provisions – for example the Court of Appeal in the case Amarnath (Suing on *Behalf of the Estate of the Late Amarnath Gupta v Kazungu & 2 others (Civil Appeal E033 of 2021)* [2023] KECA 1280 (KLR) (27 October 2023) (Judgment cited with the approval the case of Julia Kaburia v Kabeera & 5 others [2007] eKLR, where it expressed itself on Section 30 of the Act inter alia:

“The *Land Adjudication Act* provides an exclusive and exhaustive procedure for ascertaining and recording land rights in an adjudication section. By Section 30 (1) (2), the jurisdiction of the court is ousted once the process of land adjudication has started until the adjudication register has been made final ...In our respective view, the consent envisaged by Section 30 to institute or continue with civil proceedings is not a consent to file a suit challenging the decision of the Land Adjudication Officer himself on the merits of his decision. Rather, the consent is given to a person to file a suit or continue with a suit against persons who have a competing claim on the land under adjudication.



16. The ELC (Okongo J.) commenting on the role of the Court vis-a-vis that of the adjudicating bodies under the Act, in *Tobias Achola Osindi & 13 others v Cyprian Otieno Ogalo & 6 others* [2013] eKLR, held as follows:

“The whole process leading up to the registration of land as aforesaid is undertaken by the Adjudication Officer together with other officers appointed under the Act for that purpose. It follows from the foregoing that once an area has been declared an adjudication area under the Act, the ascertainment and determination of rights and interests in land within the area is reserved by the law for the officers and quasi-judicial bodies set up under the Act...The Act has given full power and authority to the Land Adjudication Officer to ascertain and determine interests in land in an adjudication area prior to the registration of such interest. As I have mentioned above, the process is elaborate. The court has no jurisdiction to ascertain and determine interests in land in an adjudication area. In my view, the role of the court is supposed to be supervisory only of the adjudication process. The court can come in to ensure that the process is being carried out in accordance with the law. The court can also interpret and determine any point or issue of law that may arise in the course of the adjudication process. The court cannot, however, usurp the functions and powers of the Land Adjudication Officer or other bodies set up under the Act to assist in the process of ascertainment of the said rights and interests in the land...”

17. From the foregoing, it follows that the Lower Court had no jurisdiction to entertain the Plaintiff's suit considering that the process of land adjudication had effectively come to its logical conclusion and determination of rights and interest in the suit land could not be re-opened otherwise than in the manner contemplated by the law. This issue ought to have been settled through the preliminary objection raised by the Appellants. The ELC, as my brother Okongo J. correctly stated, can only come under its supervisory jurisdiction, the judicial review jurisdiction, to remedy procedural subtleties in the process; the Magistrates Court cannot purport to rectify any mistake arising from an adjudication process. The Trial Court ought to have downed tools insofar as it was asked to remedy the adjudication register. That would amount to an appeal arising from the adjudication process, which is not the Magistrates Court's preserve but the Minister's.
18. To that extent, the appeal succeeds to the extent that the Lower Court dismissal of the preliminary objection vide Ruling delivered on 19th December 2023 is set aside and substituted with an order allowing the same.
19. Costs of this appeal and those in the Lower Court are to be borne by the Respondents.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 17TH DECEMBER 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Ondieki, for the Appellants

Mr. Mwangunya, for the Respondents

Happy: Court Assistant

