



THE SUPREME COURT OF KENYA

DIASPROPERTY LIMITED & SAMUEL THUITA MWANGI Vs JACK KAGUU GITHAE & 8 OTHERS

SC PETITION NO. E019 OF 2024

DATE OF JUDGMENT: 11TH APRIL, 2025

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Orders: The Petition of Appeal dated 6th May, 2024 struck out for want of jurisdiction

Background

Jack Kaguu Githae, the 1st Respondent, had entered into a sale agreement with the deceased Kinga Wamwendia in 1986 for 200 acres forming part of LR No. 11306 Ex-Moller Farm in Laikipia County, measuring approximately 264 acres. Upon payment of a deposit, the deceased placed the 1st respondent in possession of the land, while the 1st respondent continued making payments towards the purchase price. However, the transfer of the land was not completed before the deceased passed away in 1999. In 2006, the 2nd to 9th Respondents, being administrators and beneficiaries of the estate of the deceased, filed succession proceedings and later sold the entire 264-acre parcel to Diasproperty Limited and Samuel Thuita Mwangi, the Appellants.

Aggrieved by the 2nd to 9th respondent's actions, the 1st respondent filed a claim before the Environment and Land Court seeking a declaration and registration of his interests in the 200 acres and a reversal of the sale to the Appellants. The ELC found that a constructive trust had arisen and cancelled the Assent transferring the land to the estate of the deceased. The Court also held that the sale to the Appellants of the entire property including the 200 acres belonging to the 1st respondent by the 2nd to 9th respondents was illegal. The 2nd to 9th respondents were directed to surrender and deliver up to the original Grant No. I.R 20579 for L.R No.11306 for cancellation of the illegal entries. Thereafter, the mother title would be subdivided at the 1st respondent's expense for the excision of the 200 acres belonging to him and a title processed for the 200 acres in his name.

Aggrieved, the Appellants and the 2nd to 9th Respondents appealed. The Court of Appeal upheld the ELC judgment, finding the 1st Respondent had paid the full price, was in possession, and the Appellants were not innocent purchasers, without notice. It ruled that a constructive trust had crystallized, forming an overriding interest in favour of the 1st respondent.

The Appellants then filed an appeal before the Supreme Court and the following issues arose for determination:

- i. *Whether the Supreme Court has jurisdiction to hear and determine the appeal;*

- ii. *If the answer to (i) above is affirmative, whether the Court of Appeal erred in its decision of 22nd March, 2024*

Upon consideration, the Supreme Court held the Appellants failed to specify the grounds upon which they were challenging the Appellate Court's interpretation and/or application of the Constitution. The matter turned purely on factual issues that were being camouflaged as constitutional violations, and for which the Court lacked jurisdiction to determine.

Orders of the Court

The Supreme Court allowed the preliminary objection dated 5th June, 2024 and struck out the Petition of Appeal dated 6th May, 2024 for want of jurisdiction. The appellants were ordered to bear the 1st respondent's costs of the appeal.

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