



Omullo v Lolwe Housing Co-operative Society & 3 others (Civil Appeal E244 of 2024) [2024] KEHC 15251 (KLR) (29 November 2024) (Ruling)

Neutral citation: [2024] KEHC 15251 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E244 OF 2024
RE ABURILI, J
NOVEMBER 29, 2024**

BETWEEN

ZASO SHIKUKU OMULLO APPELLANT

AND

LOLWE HOUSING CO-OPERATIVE SOCIETY 1ST RESPONDENT

GRACE ANYANGO SEWE 2ND RESPONDENT

MESHACK ODUOR NDOLO 3RD RESPONDENT

PAUL OCHIENG OSELU 4TH RESPONDENT

(An appeal arising out of the Judgement and Decree of the Honourable E.N. Mwenda (PM) in Kisumu MCELC No. E013 of 2024 delivered on the 14th November, 2024)

RULING

1. From the heading of this appeal, it is purportedly filed in the Environment and Land Division of the High Court at Kisumu.
2. This court does not have such a Division and neither does such a Division exist in any High Court of Kenya.
3. That said, the appeal herein arises from Kisumu Chief Magistrate's Court ELC Case No. E013 of 2024 where the Chief Magistrate's court exercising jurisdiction of an ELC struck out the appellant's suit for being *res judicata*.
4. The question is, where do appeals lie from Magistrate's ELC?



5. The answer is found in Section 13 of the *Environment and Land Court Act* and Articles 162(2) (b) and 165(5) (b) of the *Constitution* which bar this court from hearing and determining disputes relating to Land and Environment.
6. Jurisdiction is everything without which, a court of law acts in vain and the moment a court finds that it has no jurisdiction in a matter, it must down its tools and say no more. See *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd.* (1989) where it was pronounced that:

“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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”
7. In this case, it is obvious that the appeal is filed in a wrong court. this court’s jurisdiction in matters land and environment is expressly ousted by Article 165(5) (b) of the *Constitution*.
8. Accordingly, for want of jurisdiction, this appeal is hereby struck out with no orders as to costs and this file is closed.
9. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 29TH DAY OF NOVEMBER, 2024

R. E. ABURILI

JUDGE

