



REPUBLIC OF KENYA



KENYA LAW
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**Gituku v Mithika (Environment and Land Appeal E067 of 2021)
[2023] KEELC 16768 (KLR) (15 March 2023) (Order)**

Neutral citation: [2023] KEELC 16768 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E067 OF 2021
BM EBOSO, J
MARCH 15, 2023**

BETWEEN

SERAH NJOKI GITUKU APPELLANT

AND

MOLLY KINANU MITHIKA DEFENDANT

(Being an Appeal arising from the Ruling of Hon V Kachuodho, Senior Resident Magistrate, delivered on August 30, 2021 in Thika CMC Children Case No 218 of 2018)

ORDER

1. This appeal was canvassed through written submissions. It was subsequently reserved for Judgment today. While preparing to write the Judgment, it emerged that the impugned ruling was rendered on August 30, 2021 by a Magistrate Court exercising jurisdiction as a Children’ Court under the repealed Children’s Act 2012 [the repealed Act].
2. Children’s courts were established under Section 73 of the repealed Act and exercised jurisdiction as spelt out under the said Act. Section 80 of the repealed Act contained the following framework on exercise of jurisdiction relating to appeals from Children’s Courts:

“80. Unless otherwise provided under this Act, in any civil or criminal proceedings in a children’s court, an appeal shall lie to the High Court and a further appeal to the Court of Appeal.”
3. The Children’s Act of 2012 was repealed by the *Children’s Act* of 2022. Section 99 of the *Children’s Act 2022* contains the following framework on appeals from the Children’s Courts:

“99. Unless otherwise provided under this Act, in any civil or criminal proceedings in a children’s court, an appeal shall lie:-



- a. in the first instance to the High Court on points of fact and law; and
 - b. in the second instance, to the Court of Appeal on points of law only”
4. In light of the above frameworks, there is need for this court to first determine whether it has appellate jurisdiction over the impugned ruling. Consequently, it is necessary that parties to this appeal are granted the opportunity to address the court on the question of its appellate jurisdiction over the impugned ruling which was rendered by a Children’s Court established under Section 73 of the repealed Children Act, 2012. Only after the court is satisfied that it has jurisdiction, will it render a determination in this appeal.
 5. Consequently, the order reserving a date for Judgment in this appeal is hereby vacated. The court will set a date when the parties to this appeal will address it on the question of jurisdiction.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 15TH DAY OF MARCH 2023

B M EBOSO

JUDGE

In the Presence of: -

Ms Karongo for the Appellant

Court Assistant: Ms Osodo

