



REPUBLIC OF KENYA



KENYA LAW
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**Harrison & 2 others v Busolo (Civil Appeal 22 of 2018)
[2023] KEHC 3762 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3762 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 22 OF 2018
WM MUSYOKA, J
APRIL 28, 2023**

BETWEEN

WILLIAM M HARRISON 1ST APPELLANT

MUMIAS SUGAR COMPANY LIMITED 2ND APPELLANT

CHRISTOPHER ABDI LIBUYI 3RD APPELLANT

AND

JACKLINE SARAH MITO BUSOLO RESPONDENT

*(An appeal arising from the ruling of Hon. Kwambai, Resident Magistrate,
delivered on 15th March 2018, in Butali SRMCCC No. 122 of 2016)*

JUDGMENT

1. The suit at the primary court was initiated by the respondent against the appellants, seeking orders to restrain payment for cane to 1st appellant, and for an order that the payment be made to her. The dispute was over cane harvested from South/Kabras/Samitsi/1379, which the 1st appellant allegedly harvested and sold to the 2nd appellant. The respondent asserted that the cane belonged to her, and that she was the one entitled to the sale proceeds, as she was the one who planted and cultivated the same.
2. The 1st and 3rd appellants filed a joint defence, averring that South/Kabras/Samitsi/1379 belonged to the 3rd appellant, and the respondent could not enter into a contract with the 2nd appellant over the same. It was asserted that the respondent did not own the cane at any time whatsoever. The 3rd appellant averred that he had not authorized the respondent to grow cane on the land.
3. The matter was disposed of orally, and it turned around ownership of the subject land, its leasing and use. The judgment, dated 15th March 2018, which is the subject of this appeal, turned on ownership of land, leasing and use of the said parcels of land.



4. As the appeal turns on a dispute relating to ownership of land, that is to say sale, leasing, occupation and use, I would have no jurisdiction to determine the appeal herein. Article 162(2), as read with Article 165(5), of the Constitution, takes away jurisdiction from the High Court over disputes on land, relating to its ownership, occupation and use.
5. As stated above, the dispute turned around all those issues. 2 parcels of land were mentioned in the pleadings and oral evidence, South/Kabras/Samitsi/1379 and 1381, and questions were about who owned them, who used or worked on them, who was entitled to occupy and work on them, and who was entitled to proceeds from the use of the said parcels of land.
6. It could be argued that the dispute is on a contract to sell cane, but the dispute is not between the farmer and the cane miller, but between 2 individuals who claim entitlement to the cane on account of, either owning the land or leasing it, on one hand; and the other claiming to have worked the land, by planting and nurturing the cane. The dispute is about land and its use and occupation.
7. It could also be argued that this is a division of matrimonial property dispute. The pleadings, as framed, do not point to a matrimonial property dispute. That was an angle taken at the oral hearing, otherwise parties are bound by their pleadings, and, in this case, the dispute, framed in the pleadings, is on who used the land, and is, therefore, entitled to proceeds from the use of that land, which are subjects outside the jurisdiction of the High Court.
8. This suit was filed in 2016, after the Constitution of Kenya, 2010, was promulgated in 2010, and after the Environment and Land Court Act, No. 9 of 2011, was enacted in 2011, followed by the Land Registration Act, No. 3 of 2012 and the Land Act, No. 6 of 2012. The parties were well aware of these laws, yet chose to file appeal before the court which did not have jurisdiction.
9. Going by the decision in Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR (Nyarangi, Masime & Kwach, JJA), jurisdiction is at the core of exercise of power by a court of law. Without jurisdiction the court downs its tools, which I hereby do. The result will be that the appeal herein is accordingly struck out. The respondent shall have the costs..

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 28 TH DAY OF APRIL 2023

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Appearances

Mr. Osango, instructed by JB Shilenje & Company, Advocates for the appellants.

Mr. Manyoni, instructed by Momanyi Manyoni & Company, Advocates for the respondent.

