



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Ogutu v Najichi (Civil Appeal E039 of 2023)
[2023] KEHC 3728 (KLR) (26 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3728 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E039 OF 2023**

**RE ABURILI, J
APRIL 26, 2023**

BETWEEN

WALTER OMINDE OGUTU APPLICANT

AND

STEPHEN NAMAN NAJICHI RESPONDENT

JUDGMENT

1. This appeal arises from Maseno Law Courts. It challenges a Ruling rendered on a preliminary objection raised by the defendant now appellant on the geographical jurisdiction of the court.
2. Upon perusal of the appeal and application for stay of proceedings filed by Appellant, I called on parties' counsel to submit on jurisdiction of this court. Mr Ooro has submitted that the matter is from Civil Division not ELC and there is no contrary view to that.
3. However, the other issue is whether leave to appeal was necessary and counsel for the Appellant has submitted that it was but not obtained albeit the appeal was filed within time. What that means is that matter which relates to a place of suing which is not covered under section 75 of the *Civil Procedure Act* as well as Order 43 of the *Civil Procedure Rules* require leave of court to file an appeal.
4. I have also considered the issue in dispute and it is merely on the place of suing which should not waste the courts' time as the law under Sections 11-15 of the *Civil Procedure Act* is clear on the place of suing. In the case of contracts, the suit should be instituted in a court whose local limits the contract was executed or where the defendant ordinarily resides or carries on business or if he acquiesces to the place of suing. The Defendant resides in Yala which is within Siaya County and the Plaintiff resides in Maseno near Maseno Law Courts.
5. The suit is a simple one of refund of purchase price. This court does not find it prejudicial at all to the plaintiff if he filed his suit before the court that has geographical jurisdiction since the defendant who



sold land to him and allegedly breached the contract resides in Siaya and even the land itself whose title the Plaintiff claims should be cancelled, is within Siaya County.

6. For the above reasons, and as the Appellant's counsel has no objection to the transfer of the suit to Siaya Law Courts from Maseno Law Courts, I invoke the provisions of Sections 17 and 18 of the [Civil Procedure Act](#) and order that Maseno Senior Principal Magistrate Civil Suit No E077 of 2022 shall forthwith be withdrawn from that court and be transferred to Siaya Chief Magistrate's Court for hearing and final determination.
7. I make no orders as to costs.
8. This appeal and the pending application are hereby marked as wholly withdrawn and this file is hereby closed.
9. This Ruling to be typed and availed to the parties upon payment of court fees.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 26TH DAY OF APRIL, 2023

R. E. ABURILI

JUDGE

