



REPUBLIC OF KENYA



**Kamanja v Nguru (Civil Appeal E006 of 2021)
[2023] KEHC 22895 (KLR) (29 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E006 OF 2021
LM NJUGUNA, J
SEPTEMBER 29, 2023**

BETWEEN

PETER WAWERU KAMANJA APPELLANT

AND

EPHANTUS KARIUKI NGURU RESPONDENT

(Appeal arising from the decision of Hon. G.W. Kirugumi PM in Chief Magistrate's Court at Kerugoya Civil Case No. 103 of 2018 delivered on 20th January 2021))

JUDGMENT

1. The appeal herein has been filed vide memorandum of appeal dated February 11, 2021 wherein the appellant being dissatisfied with the decision of the court in Chief Magistrate's Court at Kerugoya Civil Case No. 103 of 2018, now seeks orders that:
 - a. This honourable court do set aside the judgment and order of the lower court and substitute the same with an award of Kshs. 2,700,000/= as special damages and Kshs.1,575,000/= as general damages for breach of contract.
 - b. Costs of the appeal be awarded to the appellant.
2. This appeal is premised on the grounds that the trial magistrate erred in law and fact:
 - i. For holding the appellant was claiming Kshs.1,061,000/= from the respondent instead of Kshs.2,700,000/=;
 - ii. For failing to consider the appellant's evidence, submissions and authorities;
 - iii. For failing to consider and evaluate the valuation report dated December 20, 2018 and therefore arrived at an erroneous decision;



- iv. For failing to award the appellant Kshs.1,575,000/= as special damages for breach of contract yet she found and held that the respondent was clearly in breach of the contract;
 - v. For failing to award special damages which were specifically pleaded and proved;
 - vi. For failing to find that the value of the suit property at the date of repudiation of the contract was greater than the purchase price;
 - vii. For holding that the appellant had not specifically pleaded Kshs. 2,700,000/= in his amended claim and proved the same by a valuation report which was dated December 20, 2018;
 - viii. For delivering a judgment that was against the weight of evidence adduced by the appellant and for awarding nominal damages of Kshs. 100,000/=;
 - ix. For misdirecting herself by taking into consideration irrelevant factors and failing to take into account the relevant factors.
3. The brief facts of the case are that vide a sale agreement dated August 19, 2017, the defendant/respondent agreed to sell and the plaintiff/appellant agreed to purchase one and a half acres to be hived from land title number Kiine/Gacharu/432 at a consideration of Kshs.1,125,000/=. That the plaintiff/appellant paid Kshs. 1,061,000/= as agreed and the balance to be paid after successful transfer of the title in the name of the plaintiff/appellant. That the defendant/respondent did not meet his obligations as agreed because the land was in fact not in his name, thereby necessitating this suit. That the plaintiff/appellant failed to deliver on the agreement they had.
 4. That the defendant/respondent was willing to give the plaintiff/appellant an alternative and more profitable piece of land but this promise did not come to fruition either. That the plaintiff has not been able to find another property in the area at the same price and therefore seeks general and punitive damages for breach of contract. The plaintiff/appellant prayed for refund of the Kshs. 1,061,000/=, general damages for breach of contract, costs and any other relief the court shall deem fit.
 5. The defendant/respondent filed his defense denying the averments made by the plaintiff/appellant and stated that he had refunded the purchase price already paid before the suit was filed. Proof of the refund was produced.
 6. The plaintiff/appellant testified as PW1 and stated that at the time of instituting the suit, the value of the land had gone up to Kshs. 2,700,000/=. That he filed another suit in the Environment and Land Court but withdrew it eventually. That a criminal suit had also been instituted against the defendant/respondent when he finally decided to settle the remainder of the purchase price. That he had not received any refunds when he filed the suit. PW2 stated that he is the one who drafted the sale agreement but it did not have a default clause. DW1 who is the defendant/respondent stated that the land was not transferred to the plaintiff/appellant due to logistical challenges and he resorted to refunding the money already paid to the tune of Kshs. 1,061,000/=.
 7. The trial court in its judgment, held that the plaintiff/appellant did not plead or prove any special damages and had been refunded the full purchase price, being Kshs. 1,061,000/= with interest from the date of breach until repayment in full. The court further awarded the nominal Kshs. 100,000/= as general damages for breach of contract and costs of the suit to the plaintiff/appellant. The court was guided by the cases of *Attorney General of Belize et al v. Beliza Telecom Ltd & another* (2009) WLR 1980 at page 993, *Hadley v. Baxenate* (154) 9 Exh.214, *Millicent Perputua Atieno v. Louis Onyango* (2013) eKLR, *Kenya Tourist Development Corporation v Sundowner Lodge Ltd* (2018) eKLR.
 8. Both parties in this appeal filed their written submissions as directed by the court.



9. In his submissions, the appellant stated that according to the land valuation report dated December 20, 2018 produced in court, he was unable to get similar land for the price offered by the respondent as the cost of land has greatly appreciated. That even though he was refunded the purchase price, he cannot afford to purchase property in the desired area, thus his claim for Kshs. 2,700,000/= is valid. That this amount was specifically pleaded and proved and should have been awarded by the trial court. That the trial court ought to have awarded general damages of Kshs. 1,575,000/= being half of the value claimed in special damages. He further stated that the total sum of Kshs. 3,206,000/= would suffice in general and special damages.
10. The respondent in his submissions, challenged the jurisdiction of this court and cited the case of *Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd* (1989) eKLR. He stated that the Environment and Land Court is best suited to determine the issues on appeal according to section 13(4) of the *Environment and Land Court Act*. He went on to argue the issues on appeal in the event that the court finds that it possesses jurisdiction in the matter. He submitted that parties to a contract are bound by its terms and that the sale agreement had no default clause and the court cannot purport to include one. He relied on the case of *South Nyanza Sugar Co. Ltd v Leonard O. Arera* (2020) eKLR. That the respondent returned more money than had been paid to him by the appellant. That courts generally do not award general damages for breach of contract and when special damages must be awarded, then the same must be proved as in the case of *Jusinta Odera v South Nyanza Sugar Company Limited* (2019) eKLR. He stated that the respondent had already refunded the purchase price at the time when the suit was instituted.
11. From the memorandum of appeal and the submissions of the parties, I gather several issues for determination. However, I shall first determine the issue of whether or not this court is clothed with proper jurisdiction to determine the issues on appeal. In the celebrated case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* (*supra*) the court correctly held:
- “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.”
12. The issues at trial arose from a sale of land transaction where there was question as to ownership. The present appeal arises from the decision of Hon. G.W. Kirugumi Principal Magistrate who had jurisdiction to hear and determine the case according to section 26(3) of the *Environment and Land Court Act* which provides:
- “The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.”
- Following this provision, gazette notice No. 16268 provided Practice Directions on Proceedings relating to the Environment and the use and Occupation of, and Title to Land. Clause 7 of the said directions provides:
- “Magistrates courts shall continue to hear and determine all cases relating to the environment and the use and occupation of, and title to land (whether pending or new) in which the courts have the requisite pecuniary jurisdiction.”



It follows that the pecuniary jurisdiction of a Principal Magistrate is determined by section 7(1)(c) of the [Magistrates Act](#) as follows:

“A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed:

- (a) ...;
 - (b) ...;
 - (c) ten million shillings, where the court is presided over by a principal magistrate;
 - (d) ...;
- and
- (e) ...”

13. Any appeal relating to an issue arising from land and was determined in the magistrate's court, will lie in the Environment and Land Court which has the status of a high court. Section 26(4) of the [Environment and Land Court Act](#) provides that:

“Appeals on matters from the designated magistrate's courts shall lie with the Environment and Land Court.”

14. For the avoidance of doubt, section 13 of the [Environment and Land Court](#) provides as follows:

- 1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- 2. In exercise of its jurisdiction under article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—
 - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - b. relating to compulsory acquisition of land;
 - c. relating to land administration and management;
 - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - e. any other dispute relating to environment and land.
- 3. ...
- 4. In addition to the matters referred to in subsections (1) and (2), the court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the court.
- 5. ...



6. ...
7. In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
 - i. interim or permanent preservation orders including injunctions;
 - ii. prerogative orders;
 - iii. award of damages;
 - iv. compensation;
 - v. specific performance;
 - vi. restitution;
 - vii. declaration; or
 - viii. costs.”

15. In my view, the appeal is not properly before this court as the issue herein relates to a contract or agreement meant to grant an enforceable interest in land. The Environment and requisite Court therefore possesses the jurisdiction to hear the appeal.

16. Therefore, I shall take no step further in this case as this court lacks jurisdiction to determine any further issues. To make any orders hereinafter would amount to an illegality.

17. The appeal lacks merit on that account and I hereby strike it out with no orders as to costs.

18. It is so ordered.

DELIVERED, DATED AND SIGNED AT KERUGOYA THIS 29TH DAY OF SEPTEMBER, 2023.

L. NJUGUNA

JUDGE

.....for the Appellants

.....for the Respondent

