



REPUBLIC OF KENYA



KENYA LAW
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**Ogal & 2 others v Ouma (Miscellaneous Civil Application E017 of 2023)
[2023] KEHC 26680 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26680 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
MISCELLANEOUS CIVIL APPLICATION E017 OF 2023**

KW KIARIE, J

DECEMBER 19, 2023

BETWEEN

VICTOR OKOTH OGAL 1ST APPLICANT

KENNETH ODUOR OGAL 2ND APPLICANT

VINCENT ONYANGO OGAL 3RD APPLICANT

AND

DANISH ONYANGO OUMA RESPONDENT

RULING

1. Danish Onyango Ouma, the respondent herein, raised a preliminary objection dated the 22nd day of July 2023 premised on the following grounds:
 - a. The subject application emanates and/or arises from the proceedings and decisions of the Environment and Land Court at Oyugis and hence the court seized and/or possessed of Jurisdiction is the Environment and Land Court and not otherwise. Consequently, the Honorable Court herein is Devoid and/or bereft of Jurisdiction to entertain and/or adjudicate on the subject application.
 - b. The jurisdiction of this honorable court is ousted vide the provisions of Section 13 of the *Environment and Land Court Act*, No.19 of 2011, as read together with section 150 of the *Land Act* No.6 of 2012.
 - c. The application herein contravenes the Provisions of Article 162 of *the Constitution*, 2010, and hence same is legally untenable.
 - d. The application does not disclose and//or capture any reasonable cause of action whatsoever.
 - e. The applicants herein are non-suited.



- f. In any event, the instant application is frivolous, vexatious, and an abuse of this honorable court's process and hence ought to be struck out with costs.
2. The preliminary objection was opposed on the ground that this court has jurisdiction to entertain the instant application.
3. A preliminary objection must be on a point of law and nothing more. This was clearly stated in the case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1969] EA 696. At page 700 paragraph D-F Law JA as he then was, stated:

.... A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

I will therefore endeavour to find if issue raised herein is sustainable.

4. Section 13 of the *Environment and Land Court Act*, 2011 in respect of the Environment and Land Court, Provides:
 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 written law 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 relating to environment and land, including disputes—
 - a. relating to environmental planning and protection, trade, 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) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to the environment and land under Articles 42, 69 and 70 of *the Constitution*.
 - (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.
4. The instant application is in relation to a ruling in Oyugis Principal Magistrate's Court ELC case number 22 of 2022. Under section 13 (4) of the *Environment and Land Court Act*, the court with the appellate jurisdiction in such a matter is the ELC presided over by a judge. The application was



therefore filed in the court without jurisdiction. In the case of Owners of the *Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd* [1989] KLR 1 the court of appeal (Nyarangi JA) held as follows:

I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 draws tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

5. The preliminary objection is sustained. The application is therefore struck out with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 19TH DAY OF DECEMBER 2023

KIARIE WAWERU KIARIE

JUDGE

