



REPUBLIC OF KENYA



KENYA LAW
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**Gituku v Mithika (Environment and Land Appeal E067 of 2021)
[2023] KEELC 17869 (KLR) (30 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17869 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E067 OF 2021**

BM EBOSO, J

MAY 30, 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 30/8/2021 in Thika CMC Children Case No 218 of 2018)

RULING

1. This appeal was canvassed through written submissions. It was subsequently reserved for judgment on March 15, 2023. 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ruling was rendered on August 30, 2021 by a Magistrate Court exercising jurisdiction as a Children’s Court under the repealed [Children’s Act 2001](#) [the repealed Act].
2. At that point, doubts emerged as to whether this court had jurisdiction to hear and determine the appeal. Consequently, this court issued an order inviting the parties to appear before it and address it on the question as to whether this court had jurisdiction over this appeal. Both parties attended court through their advocates on May 18, 2022 and made submissions on the question of jurisdiction.
3. Ms Karongo, counsel for the appellant, submitted that this court is the proper court to determine this appeal because the dispute giving rise to the appeal relates to land. Noting that the appellant was an objector in execution proceedings in the Children’s Court, counsel contended that the High Court would not be able to address the issue of title to the land that was the subject of contestation in the objection proceedings.
4. Ms Wanjiru, counsel for the respondent submitted that appeals against decisions made by the Children’s Court lie to the High Court. Counsel added that the dispute before the Children Court



- was not about title, adding that the High Court was the proper court vested with jurisdiction to hear and determine this appeal.
5. I have considered the nature of the dispute that gave rise to this appeal. I have also considered the parties' rival submissions on the question as to whether this court has jurisdiction to hear and determine this appeal.
 6. Children's Courts that existed in August 2021 were established under section 73 of the repealed *Children's Act* and exercised jurisdiction as spelt out under the said Act.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."
 7. The *Children's Act of 2001* 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"
 8. From the wordings of section 80 of the repealed *Children's Act 2001*, appellate jurisdiction over decisions made by Children's Courts that existed in 2021 was vested in the High Court. Section 99 of the new *Children's Act of 2022* vests in the High Court appellate jurisdiction over decisions made by Children's Courts
 9. The impugned decision related to the question as to whether the appellant's objection to execution of the decree of the Children's Court against the suit property was merited. The Children's Court considered the objection and found it unmerited. The decision of the Children's Court was one that was appealable to the High Court within the framework of section 80 of the repealed *Children's Act of 2001*. The Environment and Land Court does not have jurisdiction to hear and determine an appeal that challenges a decisions of a Children's Court made in exercise of their jurisdiction under section 73 of the repealed *Children's Act 2001*. Similarly, the Environment and Land Court does not have appellate jurisdiction over decisions made by the Children's Court established under the new *Children's Act 2022*. That is the finding of this court on the question of jurisdiction.
 10. What should be the fate of this appeal? Prior to the pronouncement of the Supreme Court of Kenya in *Benson Ambuti Adegga & 2 others v Kibos Distillers Limited & 5 others* [2020] eKLR, this appeal would have stood to be struck out or dismissed on the ground of want of jurisdiction. The principle that emerged from the pronouncement of the Supreme Court of Kenya in the above case is that courts should facilitate access to justice by, where appropriate, redirecting disputes to the proper adjudicatory organs as opposed to completely shutting litigants out of the seat of justice.
 11. Guided by the above principle, I will redirect this appeal to the High Court which is a court of equal status. Consequently, I order that this appeal be transferred to the High Court of Kenya at Kiambu for disposal in tandem with the requirements of section 80 of the repealed *Children's Act 2001* and section 99 of the current *Children's Act 2022*.



It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 30TH DAY OF MAY
2023**

B M EBOSO

JUDGE

In the Presence of: -

Ms Karongo for the Appellant

Ms Wanjiru for the Respondent

Court Assistant: Hinga

