



REPUBLIC OF KENYA



KENYA LAW
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**Odek v Mwagi & another (Civil Appeal 12 of 2021)
[2022] KEHC 3336 (KLR) (28 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 3336 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL 12 OF 2021
RPV WENDOH, J
JUNE 28, 2022**

BETWEEN

EDWARD ODIWOUR ODEK APPELLANT

AND

JOSEPH ONYANGO MWAGI 1ST RESPONDENT

KARIERO PROPERTY 2ND RESPONDENT

*((Being an appeal from the Ruling of Hon. Areri, Principal Magistrate,
delivered on 22nd December 2020, in the original CMCC No. 512 of 2018))*

JUDGMENT

1. This is an appeal by Edward Odiwour Odek (the appellant) on the ruling of Hon. Areri P.M, delivered and dated on December 22, 2020 in CMCC No. 512 of 2018. The appellant preferred seven grounds of appeal.
2. The appeal was canvassed by way of written submissions and both parties complied.
3. I have considered the entire record of appeal and the rival arguments. The submissions by the 1st and 2nd respondents raise the issue of jurisdiction. I have seen it fit to address the issue first because it touches on the competence of this court to hear the appeal.
4. According to the appellant's submissions, the issue in contention relates to the proceedings in the trial court in relation to his Land Parcel No. Kamagambo/kabuoro/7564 (suit property). The contention of the appellant is that at all times he was the owner of the suit property but a third party commenced developments thereon without his knowledge. The appellant faults the trial court for proceeding to hear the dispute touching on the suit land in his absence.



5. It is trite law that the issue of jurisdiction even if it is not raised by any parties to the suit, it can be taken up by the court suo moto at any stage of the proceedings. See the Court of Appeal case Isaak Aliaza v Samuel Kisiavuki [2021] eKLR Nambuye J held *inter alia*:-

“...the position in law is therefore that a jurisdictional issue is a fundamental issue whether it is raised either by parties themselves or the court *suo motu*, it has to be addressed first before delving into the interrogation of the merits of issues that may be in controversy in a matter.”

6. Articles 165 (5), 162 (2)(b) of the Constitution and Section 13 (7) of the Environment and Land Court Act gives the Environmental and Land Court jurisdiction to hear and determine matters touching on land.

7. Section 13 of the Environment and Land Court Act, 2012 provides for jurisdiction of the court as follows:-

(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. (emphasis)

8. From the headings of the pleadings, the appellant intended that the appeal be filed in the Environmental and Land Court Division. It seems that this was an oversight on the part of the registry to have this matter placed before the High Court.

9. To proceed to hear and determine this suit, the decision thereof would amount to nothing.

10. Since this was an administrative fault on the part of the registry, I shall proceed to transfer this appeal to the Environmental and Land Court in Migori for hearing and determination.

Costs will abide the outcome of the appeal in the ELC Court.

DATED, DELIVERED AND SINGED AT MIGORI THIS 28TH DAY OF JUNE 2022.

R. WENDOH

JUDGE

Judgement delivered in presence of:-

N/A for the Appellant

N/A for the 1st Respondent

NA/ for the 2nd Respondent

Nyauke - Court Assistant

