



REPUBLIC OF KENYA



**Munungi v Mbogo & another (Civil Appeal 112 of 2019)
[2022] KEHC 11712 (KLR) (5 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 11712 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 112 OF 2019
MM KASANGO, J
AUGUST 5, 2022**

BETWEEN

STEPHEN WARACHI MUNUNGI APPELLANT

AND

JAMES KAROBIA MBOGO 1ST RESPONDENT

MOSES MUNUNGI WARACHI 2ND RESPONDENT

((Being an appeal from the judgment of the Chief Magistrate's Court at Kiambu (Hon. P. Gichohi, CM) dated 26th February, 2019 in the CM) in CMCC No. 60 of 2015)

RULING

1. Although parties to this appeal expected me to deliver judgment on this appeal, I decline to do so for reasons that will become obvious hereafter.
2. Jurisdiction is everything. By the celebrated case of *The Owners of Motor Vessel Lillian 's' Caltex Oil Kenya Ltd* (1989) KLR the Court of Appeal made it clear that a court cannot act without jurisdiction. This is what the Court of Appeal held in that case:-

“Jurisdiction is everything, without it, a court has no power to make one more step. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
3. This appeal arises from the decision of Kiambu Magistrate's court which determined the dispute between the parties hereof. In that court, the 1st respondent, by his plaint sought an order directing the appellant and 2nd respondent to transfer to the 1st respondent parcel No. Ndumberi/Riabai/4704.
4. The 2nd respondent admitted the claim and prayed for an order for the appellant to be compelled to transfer the aforesated property to the 1st respondent.



5. Appellant filed a defense to the 1st respondent's claim and counter claimed for the caution lodged by the 1st respondent, over the subject land to be removed. In the counter claim the appellant pleaded that the 1st respondent had trespassed the subject land which land is registered in his name.
6. The trial court by its judgment of February 26, 2019 ordered the appellant to refund 1st respondent total of Kshs.500,000.
7. It is that determination appellant has challenged in this appeal.
8. I am of the view this court lacks jurisdiction to entertain the present appeal. Determination of disputes touching "environment and the use and occupation of, and title to, land" belongs exclusively to the Environment and Land Court (ELC). This is what article 162(2) of the Constitution provide. Further, section 13 of the Environment and Land Court Act donates both original and appellate jurisdiction on matters stated in article 162(2)(b) of the Constitution to ELC. Submissions filed by the appellant, in this appeal make it very clear that what the parties in this appeal seek to be determined is out of the realms of this Court's jurisdiction.
9. Having reached conclusion that this appeal was filed in the wrong court, the High Court, I am of the view that interests of justice require that I order this file be transferred to ELC, Thika.

CONCLUSION

10. Bearing the above in mind and because this court is of the view the interest of justice require this appeal be transferred to a court having jurisdiction over the dispute I order as follows:-
 - a. This appeal is hereby transferred to the Environment and Land Court Thika for disposal.
 - b. At the reading of this Ruling, a mention date shall be fixed before Environment and Land Court Thika.

RULING DATED AND DELIVERED AT KIAMBU THIS 5TH AUGUST, 2022.

MARY KASANGO

JUDGE

In the presence of:-

Coram:

Court Assistant:- Mourice

For Appellant:- No appearance

For Respondent:- No appearance

For 2nd Respondent

Court

Ruling delivered virtually,

MARY KASANGO

JUDGE

