



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

MISC. CIVIL CASE NO. 232 OF 2019

1. ESTHER WAITHERERO

2. JAMES KIBU.....APPLICANTS

VERSUS

HENRY MUGO.....RESPONDENT

RULING

1. The applicant, **ESTHER WAITHERERO** and **JAMES KIBUI** seek, by the chamber summons dated 18th June, 2019, leave to appeal out of time against the judgment of Senior Principal Magistrate court at Gatundu in Civil Suit No. 43 of 2011. That judgment was delivered on 17th December, 2018.

2. I have taken time to read that judgment and it has become clear to me that I do not have jurisdiction to entertain the present application. Jurisdiction is everything. Without it a court has no power to make one more step. See the case of **OWNERS OF THE MOTOR VESSEL "LILIANS" V. CALTEX OIL (KENYA) LTD 1989.**

3. From reading the judgment before the Gatundu court it seems the dispute is one of the occupations and ownership of land. By that judgment Henry Mugo was granted orders to evict the applicants from property Kiganjo/Handege/T40.

4. **Article 162(2)(b)** of the Constitution provides for establishment of Environment and Land Court to deal with issues of environment and use and occupation of title. That court was indeed established whose jurisdiction is set out under **Section 13** of the **Environment and Land Court Act, 2011**. That Section 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 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

5. This Court has no jurisdiction to entertain the application dated 18th June, 2019. The jurisdiction lies with Environment and Land Court.

6. Accordingly, I order this file be transferred to the Environment and Land Court, Thika for hearing and determination.

RULING DATED, SIGNED and DELIVERED at KIAMBU this 27TH day of MAY, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

Applicants: Wanjiru holding brief for Mburu Machua

Respondent: No appearance

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE