



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT HOMA BAY**  
**CIVIL APPEAL NO. 70 OF 2019**

**BETWEEN**

**1. CHARLES ORERO**

**2. MOSES OTIENO OLOO**

**3. ISMAEL JOE OUKO**

**4. SARAH AKOTH OBONYO**

**5. MICHAEL HOSEA ARENDE.....APPELLANTS**

**AND**

**1. CHRISPIN OJIAMBO**

**2. FREDRIC NDIGA, FORESTER WIRE FOREST.....RESPONDENTS**

*(Being an Appeal from the ruling in Oyuqis Chief Magistrate's CMCC No. 37 of 2019 by Hon. Celesa Okore – Senior Resident Magistrate).*

**JUDGMENT**

1. Charles Orero and the other four appellants herein, had moved the court by way of notice of motion dated 8<sup>th</sup> May, 2019 but before it was canvassed the first respondent raised a preliminary objection. The objection was sustained. The court ruled that it lacked the requisite jurisdiction to entertain the appellants' notice of motion.

2. The appellants were aggrieved by the said ruling and filed this appeal through the firm of Kisaka & Associates Advocates. They raised five grounds of appeal as follows:

a) The learned trial magistrate erred in law and in fact in upholding the preliminary objection dated the 14<sup>th</sup> June 2019 by the 1<sup>st</sup> respondent herein by declaring that the trial court did not have jurisdiction to deliberate over the case before it.

b) The learned trial magistrate erred in law and in fact in finding that the dispute before court relating to the election of officials of the Wire Forest Management Association (WIFOMA) is an issue of management and conservation of Wire Forest Reserve as envisaged under Section 70 of the Forest Conservation and Management Act Cap 34 of 2016.

c) The learned trial magistrate erred in law and in fact by misconceiving and misapplying the provisions of the Partnership Agreement between the Kenya Forest Reserve and the WIFORMA association on dispute resolution on disputes that could arise amongst the members of the Association including the issue of election of officials.

d) The trial magistrate erred in law and fact in dismissing the applicants applications dated the 6<sup>th</sup> May 2019 and directing that parties do pursue alternative dispute resolution yet the applicants had clearly indicated in their supporting affidavit that they had appeared participated in the Alternative Dispute Resolution before the DCC who did not address their grievances but insisted that fresh elections be held despite the 1<sup>st</sup> respondent and his followers having boycotted the elections that were lawfully held during the AGM.

e) The trial magistrate erred in law and fact in presuming that Article 159 C of the constitution by promoting ADR denies litigant the right to adjudicate any disputes before courts.

3. The appeal was opposed by the respondent through the firm of Ngire Aduol & Associates Advocates.

4. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of **Selle vs. Associated Motor Boat Co. Ltd. [1965] E.A. 123**, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.

5. Section 70 of the Forest Conservation and Management Act provides:

**(1) Any dispute that may arise in respect of forest conservation, management, utilization or conservation shall in the first instance be referred to the lowest possible structure under the devolved system of government as set out in the County Governments Act, 2012.**

**(2) any matter that may remain un-resolved in the manner prescribed above, shall be referred to the National Environment Tribunal for determination, pursuant to which an appeal subsequent thereto shall, where applicable, lie in the Environment and Land Court as established under the Environment and Land Court Act, 2011.**

This section takes away the jurisdiction of the court at the first instance and should the parties fail to reach an agreement on the dispute, then the next court is the Environment and Land Court. The learned trial magistrate interpreted the law correctly on the issue of jurisdiction.

6. Since the matter in dispute was under the jurisdiction of the Environment and Land Court, this appeal was filed in the wrong forum. I will therefore invoke the dictum of Justice Nyarangi (JA) in the case of **Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd [1989] KLR 1** where he stated 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 downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.**

7. The upshot of the foregoing is that the appeal is struck out with costs.

**DELIVERED and SIGNED at HOMA BAY this 28<sup>th</sup> day of July, 2021**

**KIARIE WAWERU KIARIE**

**JUDGE**