



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL APPEAL NO. 3 OF 2017

PAUL MWAL.....1ST APPELLANT

CHARLES MUNGA KIMITA.....2ND APPELLANT

VERSUS

JOHN MUIRURI.....RESPONDENT

RULING

This appeal was admitted for hearing in this court and thereafter parties resolved to have it disposed of by way of written submissions. Directions were duly given to that end.

As I retreated to write the judgment, I realised that dispute in the magistrate's court was about non-payment of rent. As the law now stands, an appeal arising from such disputes ought to have been determined by the Environment and Land Court.

The jurisdiction of the Environment and Land Court to determine appeals arising from such disputes is found in in Article 162 (2) (b) of the Constitution. Article 162 of the Constitution generally establishes superior courts as part the system of courts in Kenya; it names the superior courts as the Supreme Court, the Court of Appeal, the High Court. It also names Courts with the status of the High Court to determine, first, the disputes relating to employment and labour; and, second, such disputes as relate to the environment, use of, occupation and title to land. It reads as follows:

- 162. (1) *The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (2).***
- (2) *Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—***
 - (a) *employment and labour relations; and***
 - (b) *the environment and the use and occupation of, and title to, land.***
- (3) *Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).***
- (4) *The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.***

Of particular relevance to this ruling is Article 162(2) (b) and (3) of the Constitution that provides for establishment of the special courts relating to land, environment and labour issues and also provides for enactment of a law delineating their jurisdiction.

The Environment and Land Act, 2011 has been enacted in accordance with article 162 (2) (b). Section 13 of this Act, stipulates in explicit terms the extent of the jurisdiction of the Environment and Land Court; it states as follows:

Jurisdiction of the Court

- 13. (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 written law 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 relating to environment and land, including disputes?***
 - (a) *relating to environmental planning and protection, trade, 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.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to the environment and land under Articles 42, 69 and 70 of the Constitution.

(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

(5) The Court shall have supervisory jurisdiction over the subordinate courts, local tribunals, persons or authorities in accordance with Article 165(6) of the Constitution.

(6) For the purposes of subsection (7)(b), the Court may call for the record of any proceedings before any subordinate court, body, authority or local tribunal exercising judicial or quasi-judicial functions, or a decision of any person exercising executive authority referred to in subsection (7)(b), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

(7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including?

(a) interim or permanent preservation orders including injunctions;

(b) prerogative orders;

(c) award of damages;

(d) compensation;

(e) specific performance;

(g) restitution;

(h) declaration; or

(i) costs.

Pursuant to the provisions of the Constitution and the Environment and Land Act, practice directions have been published more particularly in Gazette Notice No. 5178 of 28th July, 2014 with respect to, *inter alia*, proceedings relating to the environment, the use and occupation of and title to land.

The directions provide, *inter alia*, that magistrates' courts shall continue to hear and determine all cases relating to the environment and the use and occupation of, and title to land (whether pending or new) in which the courts have the requisite pecuniary jurisdiction. Appeals from the Magistrates Courts and Tribunals shall lie in the Environment and Land Court pursuant to Section 13 (4) of the Environment and Land Court Act.

Notwithstanding the practice directions, section 13(2)(a) and (4) are clear that the Environment and Land Court shall not only hear and determine disputes relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources but that it shall also exercise appellate jurisdiction over decisions of subordinate courts or local tribunals relating to these same matters of which it is seized jurisdiction. For our present purposes, it is important to note that disputes over rents are such matters that fall within this court's jurisdiction, irrespective of whether it is original or appellate.

Turning back to the appellant's case, both the 1st appellant and the respondent were in agreement that the respondent was the appellant's tenant in a property referred to as Plot No. Aguthi/Gatitu/3913; they were also in agreement that the respondent was in arrears of rent for five months as a result of which the appellant sued for its recovery. To quote the appellant, he stated, in his plaint, *inter alia*, as follows:

"4. The 1st plaintiff avers that he is the proprietor of plot No. Aguthi/Gatitu/3913 and landlord to the premises erected on the said plot and let out to the defendant in return for valuable consideration (rent) which is payable on monthly basis of Kshs. 10,000/= (sic).

6. The plaintiffs aver that the defendant fell in arrears of rent from May 2014 to September 2014 for Kshs. 50,000/= and unpaid electricity bill for Kshs. 20, 420.46, full particulars whereof are well within the defendant's personal knowledge.

7. The plaintiffs aver that in the premises, their claim as against the defendant is for a sum of Kshs. 70, 420.46.”

So, it is apparent that this is an appeal that this Court cannot purport to determine; the jurisdiction to determine such an appeal is vested in the Environment and Land Court and for avoidance of doubt Article 165 (5) is clear that this court cannot usurp the jurisdiction reserved for any of the special Courts though they share the same status as the High Court. It says:

165.(5) The High Court shall not have jurisdiction in respect of matters—

(a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or

(b) falling within the jurisdiction of the courts contemplated in Article 162 (2).

The courts contemplated in Article 162(2) are, no doubt, Employment and Labour Relations Court and the Environment and Land Court.

I am minded that none of the parties raised the issue of jurisdiction in this appeal and had they done so I would have determined it in limine; however, despite their silence, or even if it is assumed that they had consented to have this appeal determined by this Court, their consent would equally be null because they could not possibly confer jurisdiction which this court does not have and which, by express constitutional and statutory terms, has been vested in another court.

In the ultimate, in view of the foregoing provisions of the law, any purported determination of this appeal by this Court would be of no legal effect; the most I cannot do, and which I hereby do, is to have this appeal transferred to its appropriate court. Accordingly, I direct the appeal be mentioned in the Environment and Land Court at Nyeri, at the earliest date possible for directions on its hearing or such other directions that the Court may deem fit to make. It is so ordered.

Signed, dated and delivered in open court this 28th day of May, 2020

Ngaah Jairus

JUDGE