



REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT MACHAKOS

Coram: D. K. Kemei – J

CONSTITUTIONAL PETITION NO. 22 OF 2019

EAST AFRICAN PORTLAND CEMENT CO LTD....PETITIONER

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

RULING ON DIRECTIONS

1. This Ruling is in relation to the pleadings dated **3.7.2019**. The matter was pending judgement. However, in light of my findings below, it is prudent not to handle the same. A perusal of the pleadings indicates that the suit relates to a cause of action in relation to allocation of public land hence there is need for the determination on the issue of jurisdiction. The issues to be determined are whether this court has jurisdiction and what orders can the court grant.

2. In law no court or person assumes jurisdiction. Jurisdiction is a creature of statute. In Kenya, all courts derive their power from the Constitution under Article 159. The Constitution provides for the establishment of the Superior Courts under Article 162 and subordinate courts under Article 169. Judicial power is exercised by the courts which consist of;

a. The Supreme Court.

b. The Court of Appeal.

c. The High Court.

d. Subordinate courts including Magistrates Courts, Kadhis Courts, Court Martials. (See Article 169 of the Constitution).

3. The guiding principles to all courts is that where a suit is filed in a court that lacks jurisdiction to hear and determine it, then the suit would be deemed a nullity as per the decision of Nyarangi JA in the case of **Owners of Motor Vessel "S" V. Caltex Oil (K) Ltd (1989) KLR 1** who held as follows:

“Jurisdiction is everything without which a court of law has no power to make one more step. Where a court of law has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter the moment it holds the opinion that it is without jurisdiction.”

4. In selecting a court with power over the type of litigation, regard must be made to the enabling law which empowers such court to hear such a case. I say so because the dispute relates to land and that Parliament has enacted the Environment and Land Court Act and set out in details, the jurisdiction of the Court. Section 13 of the Act outlines the jurisdiction of the court as follows:

13 Jurisdiction of the Court

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 interest 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 a clean and health environment 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) Deleted by Act No. 12 of 2012

6) Deleted by Act No. 12 of 2012

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;

f) restitution; or

g) declaration; or

h) costs

5. From the above it is clear that the matters pleaded relate to environment and land which is within the province of the Environment and Land Court and which should be the proper court to handle the matter.

6. The overriding objective of the Civil Procedure Act and Rules made thereunder is to facilitate the just, expeditious, proportionate and or affordable resolution of civil disputes governed by the Act. In the furtherance of this overriding objective, the courts are mandated to ensure the just determination of proceedings, efficient disposal of business of the court, the efficient use of available judicial and administrative resources and the timely disposal of proceedings at a cost affordable by the respective parties. As it has been established that this court has no jurisdiction, the next issue for deliberation is whether this court should strike the suit for want of jurisdiction. Striking the suit would not be in the best interest of the parties herein. An order of transfer would be the best option. I find it would be appropriate to allow the case now pending before this court to be determined by the Environment and Land Court. A transfer of the suit would be in the best interest of both parties, as there is no prejudice that shall be occasioned because the suit property is within Machakos County and further that the court is also a stone's throw away from this court.

7. In the result the order that commends itself to me is that this suit is hereby transferred to the Environment and Land Court at Machakos for hearing and determination.

Orders accordingly.

Dated and delivered at Machakos this 28th day of July, 2020.

D. K. Kemei

Judge