



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT MURANG'A**

**CIVIL APPEAL NO. 52 OF 2019**

**KIHARA KIUNJURI.....APPELLANT**

**VERSUS**

**HARRISON MACHARIA WAITHAKA & 2 OTHERS.....RESPONDENTS**

*[Appeal from the judgment by P. Kiama, Senior Principal Magistrate,*

*in Kangema SPMCC No. 18 of 2014 delivered on 16<sup>th</sup> October 2019]*

**RULING**

1. There are two *competing* applications before the court. They are at *cross-purposes*. On the one hand, the appellant seeks to have the appeal *struck out* for want of jurisdiction. On the other hand, the respondents pray that the appeal be *transferred* to the Environment and Land Court for hearing and determination.

2. The respondents' notice of motion is dated 21<sup>st</sup> November 2019 and supported by a deposition of the 3<sup>rd</sup> respondent sworn on even date. The point taken is straightforward: that the decree in the lower court related to land known as Plot No. 10 Kangema. Accordingly, the resultant appeal should have been lodged in the Environment and Land Court.

3. The appellant's notice of motion is dated 16<sup>th</sup> December 2019 and premised on the affidavit of Kihara Kiunjuri sworn on the same day. He concedes at paragraphs 4, 5 and 6 that his counsel "*erroneously filed the appeal in this court instead of to the Environment and Land Court*". He avers that it was an honest mistake; and, that the respondents will not suffer any prejudice if the suit is transferred to the right forum.

4. On 14<sup>th</sup> July 2020, I heard brief submissions from learned counsel for both parties.

5. I will first deal with the motion by the respondents. The centrality of jurisdiction cannot be gainsaid. Any court acting without jurisdiction would be *employing its energy, time and resources in futility*. See *Delmonte Kenya Ltd v Murang'a County & others*, Nairobi, High Court Petition 398 of 2015 [2019] eKLR.

6. Nyarangi, J.A. captured the matter succinctly in *Owners of Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited* [1989] KLR 1:

*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.....*

7. It is common ground that the suit and impugned decree revolved entirely around the above land. **Article 162(3)** of the **Constitution** as read with section 13 of the **Environment and Land Court Act** clearly spell out the jurisdiction of the Environment and Land Court. I readily find that the court seized of jurisdiction to entertain this appeal is the Environment and Land Court. See *Republic v Karisa Chengo & Others*, Supreme Court of Kenya, Petition No. 5 of 2015 [2017] eKLR.

8. The upshot is that the appeal was filed out of jurisdiction and is a *nullity*. The overriding objective encapsulated in **Article 159** of the **Constitution** and sections 1A and 1B of the **Civil Procedure Act** cannot rescue the appeal. I have no hesitation in striking out the appeal.

9. Having reached that conclusion, the appellant's motion to transfer the suit to the right forum is on a legal quicksand. The appeal is a nullity. It follows as a corollary that there are no competent proceedings capable of transfer to another court. It is for dismissal.

10. My final orders are as follows:

a) That the *respondents'* notice of motion dated 21<sup>st</sup> November 2019 is hereby *allowed*.

b) That the *appellant's* notice of motion dated 16<sup>th</sup> December 2019 is hereby *dismissed*.

c) The entire *appeal* be and is hereby *struck out* with costs to the *respondents*.

It is so ordered.

**DATED, SIGNED and DELIVERED at MURANG'A** this 28<sup>th</sup> day of July 2020.

**KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of:**

No appearance by counsel for the appellant.

Mr. Mbuthia for the respondents instructed by J. N. Mbuthia & Company Advocates.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.