



REPUBLIC OF KENYA



**Kiruthi v Ngumu Pioneers Limited (Environment and Land Appeal
22 of 2021) [2023] KEELC 20191 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20191 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND APPEAL 22 OF 2021
CA OCHIENG, J
SEPTEMBER 28, 2023**

BETWEEN

JACOB KIRUTHI APPELLANT

AND

NGUMU PIONEERS LIMITED RESPONDENT

*(Being an Appeal from the Ruling of Machakos Chief Magistrate's Court in ELC.
Case No. E032 of 2021 delivered on 27th May, 2021 by Hon. E.H. Keago (CM))*

JUDGMENT

Introduction

1. By a Memorandum of Appeal dated the 21st June, 2021 and filed on 21st June, 2021, the Appellant appealed against the Ruling and Order of Hon. E. H. Keago, Chief Magistrate made on the 27th May, 2021 in Machakos CM ELC No. 32 of 2021 between *Ngumu Pioneers Ltd -Versus – Jackson Kiruthi*. The genesis of this Appeal is the Ruling by Hon. E H Keago, Chief Magistrate where he dismissed the Appellant's argument that his court was not clothed with jurisdiction to handle the aforementioned lower court matter.
2. The Appellant being dissatisfied with the whole of the said Ruling filed a Memorandum of Appeal dated the 21st June, 2021 which contains the following grounds:
 1. That the Learned trial Magistrate erred in law and fact by holding that he had the jurisdiction to hear and determine ELC No. E032 of 2021 contrary to the provisions of the *Civil Procedure Act*, 2010.
 2. That the Learned trial Magistrate misdirected himself on the law by holding that the main consideration as to where to file a suit where a party is claiming immovable property is the value of the said property and the pecuniary jurisdiction of the court.



3. That the Learned trial Magistrate misdirected himself by laying reliance on the decisions of Mohamed Sitaban vs George Mwangi Karoki CA No. 13/2002 and Doshi Enterprises Ltd Vs Oriental Steel Fabricators & Builders NRB HCC 627/2001, which decisions were made during the existence of the Repealed Magistrates Act, Cap 10, and indeed at Section 3 thereof conferred Magistrates Court with jurisdiction throughout Kenya in Civil matters.
4. That the learned trial Magistrate erred in law by failing to appreciate that under section 15(b) of the *Civil Procedure Act*, 2010, the only exception to mandatory requirement for instituting suits as stated thereat is only if a party has obtained leave of court or if the Defendant has acquiesced in the institution of such a suit, which was not the position.

Reasons Wherefor the Appellant prays for Order that:

1. That part of the Ruling and Order dated 27/5/2021 declaring the trial court as clothed with jurisdiction, be set aside and be substituted with an order that the Magistrates Court at Machakos lacks the jurisdiction to hear and determine ELC No. E 032 of 2021.
2. That costs of the Appeal be borne by the Respondent.
3. The Appeal was canvassed by way of written submissions.

Submissions

Appellant's Submissions

4. The Appellant insists that the trial court erred as it did not have territorial jurisdiction to handle the dispute in the lower court. Further, that it was wrong for him to rely on the repealed Magistrates' Court Act. He insists that the Ruling delivered on 27th May, 2021 declaring that the trial court had jurisdiction to hear this matter should be set aside and substituted with an order that the Magistrate's Court at Machakos lacks jurisdiction to hear and determine ELC No. E 032 of 2021, and strike out the said suit. He further sought for costs. To support his arguments, he relied on the following decisions: Peter Ouma Nyapara V Willis Ouru Okoth (2021) eKLR; Paulo Anyanzwa Kutekha V Steel Structures Limited (2018) eKLR; County Government of Kakamega V Ufanisi Freighters (K) Trawlers Limited (2018) eKLR; Owners of Motor Vessel Lillian's' V Caltex Oil Kenya Ltd (1989) eKLR and Cecilia Karuru Ngayu V Barclays Bank of Kenya Ltd & Another (2016) eKLR.

The Respondent's Submissions

5. The Respondent in its submissions insists that the Learned Trial Magistrate had territorial jurisdiction to handle ELC No. E032 of 2021 as it drew its jurisdiction from Sections 11 and 13 of the *Civil Procedure Act*. It argues that the suit property being within the Machakos County, there being different courts of competent jurisdiction within the same county, nothing limits any court from adjudicating on a dispute within its jurisdiction provided the claim is cognizable by such court and satisfies other statutory requirements. It contends that the Learned Magistrate took into consideration the provisions of the Magistrates Court Act No. 26 of 2015. It reiterates that the Appeal is misguided and an abuse of the court process: To buttress its averments, it relied on the following decision: Julius Lekuruito & Another V Nottingham Mwangi & Another (2020) eKLR.

Analysis and Determination

6. I have considered the Memorandum of Appeal, Record of Appeal including the rivalling submissions and decipher the following issues for determination. Whether the trial Magistrate erred in his findings



that he had jurisdiction to handle the lower court matter. Whether the Appellant is entitled to the orders sought in this Appeal. Who should bear the costs of the Appeal.

7. The jurisdiction of the Magistrates' Court to handle land matters is conferred by the Magistrates' Act as well as Sections 13 and 15 of the *Civil Procedure Act*.

8. Section 13 of the *Civil Procedure Act* provides that:

Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate, provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such court."

While Section 26(3) and (4) of the *Environment and Land Court Act* stipulates thus:

(3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country. (4) Subject to Article 169(2) of *the Constitution*, the Magistrate appointed under sub-section (3) shall have jurisdiction and power to handle —

- (a) disputes relating to offences defined in any Act of Parliament dealing with environment and land; and
- (b) matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the *Magistrates' Courts Act*."

9. Further, the *Magistrates' Courts Act*, 2015 at Section 9(a) provides that:

A Magistrate's Court shall -

- (a) in the exercise of the jurisdiction conferred upon it by Section 26 of the *Environment and Land Court Act* (Cap. 12A) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to -
 - (i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (ii) compulsory acquisition of land;
 - (iii) land administration and management;
 - (iv) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (v) environment and land generally."

10. In this instance, I note in the lower court the Appellant except for claiming in its Notice of Preliminary Objection that the court lacked jurisdiction to deal with the dispute therein as Kyeleni Location is within the proximity of Kangundo Law Courts failed to furnish court with any evidence to that effect. It is trite that a Preliminary Objection should only consist of pure points of law which arises from clear implication out of pleadings and if argued should dispose of a suit. In the case of Mukhisa Biscuit



Manufacturing Co. Ltd Vs West End Distributors Company Limited (1969) EA 696; the Court held that:

Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.”

11. Further in the case of Independent Electoral and Boundaries Commission V Jane Cheperenger & 2 Others Civil Application No. 36 of 2014, the Supreme Court reiterated thus:

A Preliminary Objection consists of a point of law which has to be pleaded or which arises by clear implication out of the pleadings and which if argued as a preliminary point may dispose of the suit.....it cannot be raised if any fact has to be ascertained of if what is sought is the exercise of judicial discretion.”

12. I have had a chance to peruse the Ruling of the trial court and I opine that since there was no evidence to confirm the exact location of the suit land, within Machakos County, noting that the Machakos Chief Magistrate’s Court is a court of competent jurisdiction, nothing limits it from adjudicating on a dispute within its jurisdiction provided the claim is cognizable by such court and satisfies other statutory requirements. I note the Appellant furnished this court with various authorities which I hold are persuasive and not binding on it. It is my considered view that since the suit land was situated within Machakos County, I deem the argument of the Appellant that the matter ought to have been filed in Kangundo instead of Machakos as a procedural technicality as the two courts are based within the same county. Further, Article 50 of *the Constitution* grants a party a right to be heard and this should not be curtailed on grounds of technicality. It seems to me, the Appellant was comfortable with all the findings of the trial Magistrate except the issue of jurisdiction.
13. Based on the facts as presented while relying on the legal provisions I have cited above, I find that the Learned Trial Magistrate did not err in law and fact by holding that he had the jurisdiction to hear and determine ELC No. E032 of 2021. I further find that the Learned Trial Magistrate did not misdirect himself on the law by holding that the main consideration as to where to file a suit where a party is claiming immovable property, is the value of the said property and the pecuniary jurisdiction of the court. Further, that there is no legal provision binding the Trial Magistrate from not relying on the decision of Mohamed Sitaban Vs George Mwangi Karoki CA No. 13/2002 and Doshi Enterprises Ltd Vs Oriental Steel Fabricators & Builders NRB HCC 627/2001 as this is a decision which binds it.
14. In the circumstances, I find the instant Appeal unmerited and will dismiss it with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 28TH DAY OF SEPTEMBER, 2023

CHRISTINE OCHIENG
JUDGE

