



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**SUCCESSION CAUSE NO. 302 OF 2002**

**IN THE MATTER OF THE ESTATE OF RAMADHAN KWEYU AMULABU (DECEASED)**

**RULING**

1. On 22<sup>nd</sup> May 2020, I delivered a ruling herein, where I confirmed the grant, made on 31<sup>st</sup> October 2019, to Lydia Namusia Silas and Jane Njeri Njenga, and gave orders on distribution of the estate of the deceased, being East Wanga/Isongo/385.
2. The applications that I am tasked with determining are dated 19<sup>th</sup> June 2020 and 29<sup>th</sup> June 2020, respectively, to be referred to as the first application and second application, respectively, brought by Beneah Chimeleni Nyapolah and Pamela Nawire Kulupi, respectively, to be referred to as the first and second applicants.
3. The first application principally seeks orders for review and setting aside of the confirmation orders made on 22<sup>nd</sup> May 2020, and a rehearing of the confirmation application, after the first applicant has been granted opportunity to file a response to that application. The grounds in support of the application are chiefly that the first applicant did not present the evidence that she now proposes to place before the court at a rehearing of the confirmation application. The reason given for not presenting that evidence is that she had supplied her advocate with the relevant documents, who, due to some unexplained inadvertence, failed to file them in court. It is averred that mistake of an advocate ought not be visited on the client. It is submitted that the review is based on discovery of new evidence. It is also argued that the outbreak of Covid-19 also presented a challenge.
4. In the affidavit sworn in support of the application, by the first applicant, on 19<sup>th</sup> June 2020, she avers to have had bought a portion of East Wanga/Isongo/385 from Thomas Lutta Machwanda and Mwanaisha Nyarotso Ondeni, who had bought it from the deceased, but the consideration was paid to a son of the deceased, the late Saleh Amulavu, who was paid the consideration following orders made in Kakamega HCCA No. 68 of 1995. She accuses the administratrices of not disclosing facts to the court. He cites proceedings of the tribunals set up under the now repealed the Land Disputes Tribunal Act, cap 303A, laws of Kenya, to make the case that she had been awarded the land she had bought by the said tribunals.
5. Among the documents attached to her affidavit is a land sale agreement between her and Thomas Lutta Machwanda and Mwanaisha Nyarotso Ondeni, dated 26<sup>th</sup> October 2000, disposing of a property known as E. Wanga/Isongo/2276, allegedly registered in the names of Thomas Lutta Machwanda and Mwanaisha Nyarotso Ondeni. There is copy of another land sale agreement, dated 22<sup>nd</sup> August 1996, between the deceased, on the one part and Thomas Lutta Machwanda and Mwanaisha Nyarotso Ondeni, on the other, with respect to disposal of three (3) acres out of East Wanga/Isongo/385. There is copy of an acknowledgement, dated 4<sup>th</sup> January 1997, executed by the deceased and Thomas Lutta Machwanda and Mwanaisha Nyarotso Ondeni, with respect to receipt of the purchase price, for sale the subject of the agreement dated 22<sup>nd</sup> August 1996. The other document is a consent, by way of a letter dated 16<sup>th</sup> June 1999, executed by an advocate for judgment-creditors, Saleh N. Amulavu and John Lutta Machwanda, filed in Kakamega HCCA No. 68 of 1995. There is copy of another land sale agreement, dated 20<sup>th</sup> January 2003, between the administratrix of the estate of the deceased, that is to say Mary Ashioya Kutindi, on the one part, and Beneah Chimeleni Nyapollah, with respect to the portion of East Wanga/Isongo/385 that Thomas Lutta Machwanda had purportedly bought from the deceased. There is also another land sale agreement between the widows and administratrices of the estate of the deceased, that is to say Mary Ashioya Kutindi and Besi Hamusinda Senagi, on one part and Beaneah Chimeleni Nyapolah, on the other, again, with regard to the sale agreement purportedly entered into between the deceased and Thomas Lutta Machwanda. Then there are proceedings that were conducted by the Provincial Land Disputes Appeals Tribunal, in Case No. 96 of 2007, between first applicant, on one part, and Besi Hamusindi Senagi, Rukia Ashioya Kweyu and Agas Mary Ashioya Kutindi, on the other, where, on 30<sup>th</sup> August 2007, it was directed that the first applicant be given four acres upon subdivision of East Wanga/385. There is a letter dated 12<sup>th</sup> March 2018, from the Deputy County Commissioner for Mumias East Sub-County, indicating that the family of the deceased had refused to finalise succession proceedings, and hence failed to transfer the land to Beneah Chimeleni Nyapolah.
6. The second application seeks similar orders with the first application, and it is premised on similar grounds. In her affidavit in support, sworn on 29<sup>th</sup> June 2020, the second applicant avers that her husband, the late Fanuel Wakungwi Kulubi, had bought six acres out of East Wanga/Isongo/385. She avers that she seeks review on grounds of new evidence that could not be adduced in court due to Covid-19. She states that one of the widows had filed an affidavit in support of the confirmation application, averring that she was aware of the sale to her late husband. She further avers that there were proceedings before the Provincial Land Disputes Tribunal, which had awarded her the land.

7. Among the documents attached to her affidavit is a handwritten agreement, made on 18<sup>th</sup> January 1972, in Kiswahili, whose translation into English has not been provided, between the deceased and one Fanuali Mulubi Wakungwi, disposing of six acres of East Wanga/Isongo/385. There is a court order made in this cause on 22<sup>nd</sup> December 2010, on an application by the second applicant, for deposit of proceeds harvested from East Wanga/Isongo/385 in court. There is also an affidavit that the deceased administratrix, Besi Hamusinda Senagi Kweyu, swore on 20<sup>th</sup> February 2012, where she averred that Fanuel Kulubi had bought a part of the estate from the deceased. Finally, there is copy of the proceedings that were conducted before the Provincial Land Dispute Tribunal, in Case No. 102 of 2007, between Besi Hamusinda Senagi Kweyu and the second applicant, where the tribunal rendered a determination, on 6<sup>th</sup> September 2007, to the effect that the late husband of the second applicant was entitled to the six acres that he had bought from the deceased.

8. There is a reply to both applications, by Lydia Namusia Silas, who is one of the administratrices, to be referred hereafter as the administratrix, through an affidavit that she swore on 15<sup>th</sup> July 2020. On the first application, she avers that there was no privity of contract between the deceased and the first applicant, since that sale allegedly happened between the deceased and one Thomas Lutta Machwanda. She asserts that the said Thomas Lutta Machwanda never claimed title to any part of the estate, and, to the best of her knowledge, the said Thomas Lutta Machwanda, had only leased part of the land, and that he vacated the land after the lease expired. She states that the court had, in the judgment of 31<sup>st</sup> October 2019, considered the matter of the said sale, at paragraph 35 of the judgment, and ruled that the sale of 26<sup>th</sup> October 2000, happened after the death of the deceased and before the grant was confirmed, and it, therefore, fell afoul of section 82(b)(ii) of the Law of Succession Act, Cap 160, Laws of Kenya. She further avers that the proceedings of the provincial land tribunal were a nullity since the said tribunal had no power to grant land when title was in the name of a deceased person. On the affidavit of Besi Hamusinda Senagi Kweyu, acknowledging the sale, she argues that she was illiterate and signed the affidavit under undue influence. On the second application, she asserts that the same was void for noncompliance with section 6 of the Land Control Act, Cap 302, Laws of Kenya. She further asserts that none of the heirs were witnesses to the agreement of 16<sup>th</sup> January 1972, hence it was a forgery and did not qualify to be an agreement under section 3(3) of the Law of Contract Act, Cap 20, Laws of Kenya. She avers that both applicants are claiming title to the subject property, and that being the case they ought to have moved the Environment and Land Court, since the High Court has no jurisdiction, by dint of Article 162(2) of the Constitution, to determine the question of title to property. She further avers that she was not alive in 1972, and she could not testify as to transactions that happened before she was born. She also argues that the claim by the second applicant was statute-barred under section 7 of the Limitation of Actions Act, Cap 22, Laws of Kenya. She also argues that the second applicant lacked capacity to prosecute the claim. She further avers that the late husband of the second applicant had only leased part of the estate, and when he died the second applicant moved the court to have the proceeds of sale deposited in court. She accuses the second applicant of forcefully entering into part of the estate in 2017. Finally, she argues that there were no new facts to justify review of the orders made on 31<sup>st</sup> October 2019.

9. Directions were given on 15<sup>th</sup> July 2020, for disposal of the two applications simultaneously, by way of written submissions. There has been some compliance with the directions, by filing their respective written submissions by the first applicant and the administratrix. The second applicant did not file any.

10. In his written submissions, the first applicant makes no legal arguments, and cites no statutory provisions nor case law. He has merely summarised the facts as set out in his application and affidavit. On her part, the administratrix has argued five points. One, that there was no privity of contract between the deceased and the applicants. Regarding the first application, it is submitted that the transaction was between the deceased and Thomas Lutta Machwanda, and not the first applicant. With respect to the second application, it is argued that the alleged sale transaction was between the deceased and the late husband of the second applicant, and the second applicant had not provided proof that she had been granted representation to the estate of her late husband to enable her pursue the claim on behalf of that estate. Two, the transaction by the first applicant offended section 82(b)(ii) of the Law of Succession Act, to the extent that it amounted to disposal of immovable property before the grant was confirmed. Three, the agreement by the late husband of the second applicant was void for noncompliance with section 6(1) and 8(1) of the Land Control Act, for lack of the mandatory consent of the local Land Control Board. Four, the High Court lacked jurisdiction to entertain claims relating to title to land as between an estate and third parties, by dint of Articles 162(2) and 165(5) of the Constitution. Finally, five, the proceedings by the Provincial Land Disputes Tribunal were void, since the tribunal lacked power to distribute the property of a dead person.

11. It is common ground that the two applicants are not heirs to the estate of the deceased, for they were neither spouses nor children of the deceased. Their claims are founded on transactions that allegedly happened in 1972, between the deceased and others. It is also, therefore, common ground, as between the applicants, that the two applicants were not privy to the land sale agreements of 1972, since they were not the alleged buyers of the subject land.

12. Let me state consideration of the merits of the application from the alleged events of 1972. It is not clear when the land in question, East Wanga/Isongo/385, was first registered under the Registered Land Act, Cap 300, Laws of Kenya, since none of the parties have exhibited copy of any title document for East Wanga/Isongo/385 dating to 1972 and beyond. The only documents of title relating to the said property are copies of a certificate of official search, dated, dated 8<sup>th</sup> January 2002, and a green card, opened on 16<sup>th</sup> February 1967. The green card shows that a Kweyu Wamulabu was registered as proprietor of the said property on 16<sup>th</sup> February 1967. The two documents also demonstrate that a title deed was issued on 6<sup>th</sup> November 1990 to Ramadhan Kweyu Amulabu. I suppose that Kweyu Wamulabu and Ramadhan Kweyu Amulabu refer to one and the same individual. It is possible then that the deceased could have entered into sale transactions on the said property before he died in 1997.

13. The validity of the said sales has been challenged by the administratrices. One of the principal grounds being that the sales were subject to the Land Control Act, and evidence had not been provided to the effect that the mandatory consent of the Land Control Board, as required by the Land Control Act, had been obtained. The Land Control Act commenced on 12<sup>th</sup> December 1967. Its object is to provide for controlling transactions in agricultural land. Section 2 defines agricultural land, in a manner that clearly applies the Act to East Wanga/Isongo/385. The dealings in agricultural land that are controlled by the Act are set out in section 6, and they include sale of agricultural land and division of such land into two or more parcels. Such sale or division would be void for all purposes unless consent to the sale or division is given by the relevant land control board. Sections 8 and 9 of the Land Control Act deal with the process of applying for and obtaining consents to controlled transactions.

14. East Wanga/Isongo/385 was agricultural land, for the litigation in this cause talks of the piece of land as measuring 21 acres, and portions of it being utilised to grow sugarcane. Clearly, before any party asserts that they bought a portion of East Wanga/Isongo/385, they must endeavour to demonstrate that the sale transaction was not over that land was subject to the Land Control Act, and, therefore, there was no need for consent to be obtained for the transaction. If the land was agricultural land, which fell within a land control area, then it has to be demonstrated that the transaction was valid since the relevant consent of the land control board had been obtained. I note that, in this case, none of the applicants sought to address the matter of the Land Control Act.

15. Is the matter of the Land Control Act relevant? I believe it is, for if the sale in dispute was in respect of agricultural land, then it must be demonstrated that the Land Control Act did not apply to the transactions or if it did then the provisions the Land Control Act had been complied with. Validity of contracts with respect to sale of land is not just limited to offer, acceptance and consideration, compliance with the provisions of the Land Control Act is an additional factor. It is not enough, where a party claims to have had acquired an interest in agricultural land, by way of sale, to merely place a copy of a sale agreement before the court, supported by evidence that money had changed hands, as evidence of the validity of the transaction. The alleged buyer has to contend with the requirements of the Land Control Act, and demonstrate that the said requirements had been met. A sale of agricultural land cannot be valid unless the parties comply with the Land Control Act.

16. The other argument against the sales is that the two applicants were not privy to the land sale agreements between the deceased and the alleged buyers. Let me start with the second applicant. I believe her case is more straightforward. She does not allege to be the one who transacted with the deceased. Instead, she has disclosed that it was her late husband who bought the land. So she does not claim in her own right, but as a representative of her late husband, and, therefore, she claims on behalf of his estate. The fact that a person is a spouse of a dead property owner does not automatically make them personal representative of that dead person. Representation to an estate is conferred on a person, in cases of intestacy, by the court, and in cases of testacy, by the appointment of the person as executor or executrix of the will of the deceased. In this case, it has not been disclosed whether the late husband of the second applicant died testate or intestate. Either way, before she could begin to claim her late husband's entitlement to a portion of the subject she had to have obtained representation to his estate, by getting a full or limited grant of representation. She has not demonstrated that she had obtained representation of any kind to the estate of her late husband to entitle her to assert her entitlement to it. I doubt whether she has any standing to articulate a claim to the estate of the deceased herein.

17. The law on this is section 45 of the Law of Succession Act, which deals with intermeddling and protection of estates. The provision states as follows:

*“(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.*

*(2) Any person who contravenes the provisions of this section shall—*

*(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and*

*(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”*

18. The provision outlaws handling of estate property by a person who has no authority to handle it. Such authority would come from a will or from a grant of representation. Any person who handles the property of a dead person without authority commits the offence created under section 45(2)(a) of the Law of Succession Act. Intermeddling with estate property includes filing suits for and against the estate before obtaining representation. See *Gitau and Two Others vs. Wandai and Five Others* (1989) KLR 231 and *John Kasyoki Kieti vs. Tabitha Nzivulu Kieti & Annah Ndileve Kieti* (2001) eKLR. Suits initiated by such persons, who have not obtained representation would be nullities. The reason for this is that such persons would lack *locus standi* to initiate the suits. Under section 79 of the Law of Succession Act, the property of a dead person vests in the personal representative of the deceased, and it is only after that vesting, subsequent to being appointed personal representative, that the personal representative can exercise the powers of a personal representative that are set out in section 82 of the Law of Succession Act, which include the power to sue and be sued on behalf of the estate. The power to sue and be sued is stated in section 82(a).

19. Sections 79 and 82(a) of the Law of Succession Act provide as follows:

*“79. Property of deceased to vest in personal representative*

*The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”*

*“82. Powers of personal representatives*

*Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—*

*(a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;*

*(b) ...”*

20. The second applicant has not endeavoured to demonstrate that she has the legal standing to agitate the claim on behalf of her husband. She has not alleged that he died testate, and she has not produced any will as proof that her late husband appointed her executrix of his will. If he died intestate, she has not placed on record any grant of letters of administration intestate, whether full or limited, authorising her to administer the estate of her late husband. Administration in this context would include gathering or collecting or getting in the estate. Commencing civil action to recover assets falls within the administration duties of the administrator. Perfecting titles, that is property that the deceased had purchased but died before the same was transferred to his name, is part of it. The administrator has a duty to follow up with the sellers to ensure that the property is transferred to the name of the dead buyer. Such action can only be done by an administrator, otherwise any person who does it without a grant would be intermeddling with the estate. The second applicant herein is attempting to recover or get in or collect or gather an asset that her late husband had purportedly bought, but died before it was transferred to his name. She has not provided proof that she has been granted representation to her late husband's estate. It cannot, therefore, be said that she has any legal standing to pursue that asset. Any legal action by her, on behalf of her late husband, would be incompetent for lack of legal standing or *locus standi* to commence the action. See generally *Ingall vs. Moran* [1944] KB 160, *Kothari vs. Qureshi and Another* [1967] EA 564, *Lalitaben Kantilal Shah vs. Southern Credit Banking Corporation Ltd* HCCC No. 543 of 2005, *Otieno vs. Ougo and another (number 4)* [1987] KLR 407, *Troustik Union International and another vs. Mrs. Jane Mbeyu and another* [1993] eKLR, *Martin Odera Okumu vs. Edwin Otieno Ombajo* HCSC N9479 of 1996, *Coast Bus Services Limited vs. Samuel Mbuvi Lai* CACA No. 8 of 1996, *Ganinjee Glass Mart Ltd & 2 others vs. First American Bank Ltd* [2007] eKLR, among others.

21. For clarity sake, let me mention that section 80 of the Law of Succession Act addresses when a grant takes effect. A grant of probate establishes a will from the date of death, meaning that all what an executor does between the date of death and the date of the making of grant is valid. That is so since the executor is appointed by the will of the testator and not the grant of probate. The office of executor become effective upon the death of the maker of the will, and the making of the grant of probate merely evidences the appointment through confirmation of the validity of the will. A grant of letters of administration, on the other hand, is valid from the date of its making. It means that the administrator appointed under it can only assume office from the date of the making of the grant. Whatever acts the administrator engaged in before the grant was made would not be validated by the making of the grant, and they would fall afoul of section 45, and would amount to intermeddling with the estate of the deceased. Since the second applicant did not have any grant when she lodged her application, her act of filing the application amounts to intermeddling.

22. Section 80 states as follows:

*“80. When grant takes effect*

*(1) A grant of probate shall establish the will as from the date of death, and shall render valid all intermediate acts of the executor or executors to whom the grant is made consistent with his or their duties as such.*

*(2) A grant of letters of administration, with or without the will annexed, shall take effect only as from the date of such grant.”*

23. Let me now address the case of the first applicant, which is a little more convoluted. As stated earlier, the first applicant did not transact with the deceased. He allegedly acquired an interest in the land from a person who had allegedly acquired the interest from the deceased. Does he have a direct claim against the estate? I do not think so. The deceased was not indebted to him, and, therefore, he has no claim whatsoever against the estate. He can only have a legitimate claim against the person that he had dealt with. I note that the first applicant thereafter entered into a series of agreements with the administratrices of the estate of the deceased, where they acknowledged the said alleged transaction between the deceased and Thomas Lutta Machwanda. That was done apparently to give the first applicant some sort of legitimacy in his claim against the estate. These agreements were entered into in 2003 and 2006, long after the sale transaction between the first applicant and Thomas Lutta Machwanda, and the said transactions did not involve the said Thomas Lutta Machwanda. However, the administratrices acknowledged the said transactions. It would appear that from that angle the first applicant could found a claim against the estate. The issue as to whether the transaction between the deceased and Thomas Lutta Machwanda was valid is another matter, that the High Court may not venture to determine, for reasons that shall become clear later in this ruling.

24. Both applicants have placed before me records that they litigated over the portions of land they claim were bought from the deceased, before the institutions created under the Land Disputes Tribunals Act, and that the said entities had ruled in their favour, and directed that the portions they had bought be excised from East Wanga/ Isongo/385. Under the Land Disputes Tribunals Act, the decision of the tribunal or the appellate body had to be adopted by the court before it could be enforced as an order of the court. No order of a magistrate's court was placed before me, purporting to have had adopted the decisions of the Provincial Land Disputes Tribunal. There is, therefore, no decree or order of the court that can be given effect by the court. In any event, after the adoption of the award of the entities under the Land Disputes Tribunals Act, the holders of the orders or decrees ought to have sought enforcement of the orders directly with the land registrars instead of coming to the probate court.

25. The other point raised is that the High Court, sitting as a probate court, does not have jurisdiction to determine the questions raised by the applicants. The applicants claimed to have had acquired an interest in estate property through sale of land. My understanding is that the applicants would like the confirmation hearing repeated so that they can place before the court evidence that they had acquired the property through sales and that, for that reason, they were entitled to a share of the property. They would, therefore, be inviting the court to make determination that the said land sale transactions were valid, and that they had become entitled to title to them and to use them. Do I, sitting as Judge of High Court, have jurisdiction to make that determination?

26. I do not think so. Under the constitutional order ushered in by the promulgation of the new Constitution in 2010, the High Court lost the jurisdiction to make determinations on questions relating to ownership or title to land, and use and occupation of land. That comes out very clearly under Articles 162(2) and 165(5) of the Constitution, which state as follows:

*“162. (1) ...*

*(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—*

(a) ...

(b) *the environment and the use and occupation of, and title to, land.*”

163 ...

164 ...

165. (1) ...

(2) ...

(3) ...

(4) ...

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

(a) ...

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

27. Article 162(3) of the Constitution commanded Parliament to pass legislation to give effect to Article 162(2) of the Constitution, and in compliance with that directive Parliament passed the Environment and Land Court Act, No. 19 of 2011, to establish the court envisaged in Article 162(2)(b), to delineate the jurisdiction of the court envisaged under that Article. The preamble to the Environment and Land Court Act states the objective of the Act to be:

*“... to give effect to Article 162(2)(b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land; and to make provision for its jurisdiction functions and powers and for connected purposes.”*

28. The scope and jurisdiction of the said court is set out in section 13 of the Act, which states 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 the 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 interests in land; and*

*e) any other dispute relating to environment and land.”*

29. A determination of the question as to whether there was a valid sale of registered land, such as East Wangari/Isongo/395 and 2276, and, therefore, entitling the buyer to a right to have the interests sold transferred to him, in accordance with the relevant land legislation, is an issue that is well outside the jurisdiction of the High Court, by virtue of Articles 162(2) and 165(5) of the Constitution and the Environment and Land Court Act.

30. The parcels of land comprised in Wangari/Isongo/395 and 2276, being registered land, are governed and regulated by both the Land Registration Act, No. 3 of 2012, and the Land Act, No. 6 of 2012, both of which carry provisions which state the jurisdiction of the court with regard to the application and interpretation of the provisions of the two statutes. These provisions are to be found in sections 2 and 101 of the Land Registration Act and sections 2 and 150 of the Land Act.

31. The provisions in the Land Registration Act state as follows:

*“Interpretation.*

*2. In this Act, unless the context otherwise requires—*

*“Court” means the Environment and Land Court established under the Environment and Land Court Act, 2011, No. 19 of 2011:  
...*

*Jurisdiction of court.*

*101. The Environment and Land Court established by the Environment and Land Court Act, 2011 No. 19 of 2011 has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”*

32. The Land Act carries similar provisions; which state as follows:

*“2. Interpretation*

*In this Act, unless the context otherwise requires—*

*“Court” means the Environment and Land Court established under the Environment and Land Court Act, 2011 (No. 19 of 2011);  
...*

*150. Jurisdiction of the Environment and Land Court*

*The Environment and Land Court established in the Environment and Land Court Act and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”*

33. To my understanding these provisions, in the context of the context of the application before me, mean that any disputes or questions or issues that require court intervention which revolve around sale, registration and transfer of land, fall within the jurisdiction of the Environment and Land Court. The plain effect of these provisions is that the High Court has no jurisdiction to address itself to matters that fall under the jurisdiction of the Environment and Land Court. The issues that both applicants raise, in the applications the subject of this ruling, relate to sale of land, which is regulated by the Land Registration Act and the Land Act. Contracts relating to sale of land are about title, for the agreement concerns conveyance of the title in the land from the seller to the buyer. After sale transfer should follow. All these processes are regulated and governed by the Land Act and the Land Registration Act, and any dispute arising from the same ought to be a matter for resolution by the Environment and Land Court, as envisaged by the Land Act and the Land Registration Act. Similarly, the applicants claim that they took possession of the land that they had allegedly bought, and developed it. These issues turn around occupation and use of the land. All these are matters covered under the Land Registration Act and the Land Act, and, going by what I have stated above, the High Court has no jurisdiction over disputes that arise with respect to matters provided for under the two statutes.

34. Overall, I do not find any merit in the applications, dated 19<sup>th</sup> June 2020 and 29<sup>th</sup> June 2020, and I do hereby dismiss them. Let each party bear their own costs.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 16<sup>TH</sup> DAY OF OCTOBER, 2020**

**W MUSYOKA**

**JUDGE**