



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 211 OF 2013

**MARY NJERI MBURU (suing as personal representative of the estate of
KARUGU GUANDAL.....PLAINTIFF**

VERSUS

BENSON WAWERU NGERU.....DEFENDANT

COUNTER CLAIM

BENSON WAWERU NGERU.....PLAINTIFF

VERSUS

**MARY NJERI MBUGU (*Suing as personal representative of the estate of*
KAGURU GUANDAL.....1ST DEFENDANT**

Plaintiff by way of original action.

KENYA INDUSTRIAL ESTATE LTD.....2ND DEFENDANT

NATIONAL BANK OF KENYA.....3RD DEFENDANT

RULING

At the centre of this dispute is a parcel of LR. No. 209/11470. In the plaint first filed on 6th June 2013 and the subsequent defences and counter claim, the parties herein claim various interests related thereto.

Subsequently, the 2nd Defendant herein filed a Notice of Preliminary Objection based on Section 7 of the Limitation of Actions Act, Cap 22 Laws of Kenya and Order 5 Rules 1 and 2 of the Civil Procedure Rules praying that the suit should be struck out for being incurably defective. It was also stated in the notice that the suit is frivolous, vexatious and an abuse of the court process, and further that it was incompetent and bad in law.

This suit was lodged in the Civil Division and the record shows that it has been handled by at least by two other judges apart from me. After giving directions relating to the preliminary objection, I retired to consider the ruling by going through the entire record. It is when it dawned on me that this court may not have jurisdiction to continue addressing the issues herein, including the Notice of Preliminary Objection.

The subject matter herein being land, the jurisdiction of this court comes into focus in view of Articles 162 (2) and 165 (5) of the Constitution. Further there is the Environment and Land Court Act No. 19 of 2011 Section 13 thereof.

Any dispute relating to ***“the environment and the use and occupation, and title to, land”*** may not be within the jurisdiction of this court going by the provisions of law cited hereinabove. After the citation of the pleadings as set out in the plaint, the plaintiff set out the prayers inter alia as follows: -

i) Vacant possession or eviction orders for the portion of the suit occupied by the defendant

ii) Mesne profits to be assessed by a valuer for a period from November 2004 to the date of recovery of vacant possession.”

Clearly, the prayers ousted the jurisdiction of this court and placed the claim under the Environment and Land Court as provided by law. The foregoing being the case, I hereby declare that I have no jurisdiction to address, not only the Notice of Preliminary Objection but also the entire suit as pleaded by the parties.

The order that commends itself is that this suit is now transferred to the Environment and Land Court for hearing and determination.

The costs shall be in the cause.

Dated, signed and delivered at Nairobi this 29th day of May 2019

A. MBOGHOLI MSAGHA

JUDGE