



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CIVIL APPEAL NO. 19 OF 2016

ZEDEKIA KABARA OSIRE APPELLANT

VERSUS

NAHASHON ONYANGO OTONDO.....1st RESPONDENT

KENYA SUGAR BOARD.....2nd RESPONDENT

RULING

1. As I retired to write the judgment in this appeal my mind was drawn to the subject matter in this cause. It all has to do with the parcel of land known as **Suna East/Wasweta 1/1814** (hereinafter referred to as '**the land**'). The litigation over the land traces its history from the proceedings before the Lands Registrar to the Lands Disputes Tribunal and to the Magistrates Court in Migori before the advent of the appeal subject of this ruling.

2. Although the parties did not raise the issue of the jurisdiction of this Court in this appeal this Court is however called upon by the **Constitution** and the law to first satisfy itself that it has the jurisdiction over the dispute before it deals with the matter further. That was the finding in the *locus classicus* case of **The Owners of Motor Vessel "LILIAN "S" -vs- Caltex Oil Kenya Ltd (1989) 1 KLR 1** where **Nyarangi, JA.** stated at page 14 that: -

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 pending other evidence and a court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

3. The Court of Appeal in the case of **Kakuta Maimai Hamisi -vs- Peris Pesi Tobiko & 2 Others (2013) eKLR** had the following to say on the centrality of the issue of jurisdiction: -

So central and determinative is the jurisdiction that it is at once fundamental and over-arching as far as any judicial proceedings in concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it once it appears to be in issue in a consideration imposed on courts out of decent respect for economy and efficiency and necessary eschewing of a polite but ultimate futile undertaking of proceedings that will end in barren cui-de-sac. Courts, like nature, must not sit in vain.

4. This Court, being a High Court, is a creature of **Article 165** of the **Constitution** and which Article also defines its jurisdiction. Under **Article 165(5)** the **Constitution** excludes the High Court from exercising jurisdiction over matters falling within the jurisdiction of the courts contemplated in **Article 162(2)**. **Article 162(2)** of the **Constitution** provides that the mandate to deal with disputes relating to the use, occupation and title to land is a legal preserve of the Court contemplated under that Article. That Court is now the Environment and Land Court.

5. By applying the foregoing to this matter, it becomes clear that the dispute between the parties herein falls within the preserve of the Environment and Land Court and any appeal from the Magistracy ought to be dealt with by the Environment and Land Court instead. This Court is hence not seized of jurisdiction and it accordingly down its tools.

6. I hereby order that this matter be placed before the Environment and Land Court for directions on a date to be agreed between the parties.

7. Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 23rd day of May 2019.

A. C. MRIMA

JUDGE

Ruling delivered in open court and in the presence of: -

Mr. Roche Odhiambo, Counsel instructed by the firm of Messrs. Odhiambo & Co. Advocates for the Appellant.

Messrs. Ngala Awino & Co. Advocates for the First Respondent

Messrs. Mulondo, Oundo, Muruiki & Co. Advocates for the Second Respondent.

Evelyne Nyauke – Court Assistant