



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 86 OF 2018

SALIM HAMISI KISOKONI.....APPELLANT

VERSUS

DISMAS MAKOKHA MANGOLI.....1ST RESPONDENT

SIFINA NALIAKA MAKOKHA.....2ND RESPONDENT

(An appeal arising from the decision of the Hon. H. Wandere Principal Magistrate (PM), in Mumias PMCCC No. 254 of 2011)

RULING

1. The Constitution 2010, at Article 162(2), establishes a special court to handle disputes that revolve around the environment and the use and occupation of and title to land. Article 165(5) of the same Constitution strips the High Court of jurisdiction over such matters.

2. For avoidance of doubt, Article 162(2) states as follows: –

‘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.’

3. On the other hand, Article 165(5) of the Constitution states as follows: -

‘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).’

4. In obedience to Article 162(2) of the Constitution, Parliament did, through the Environment and Land Court Act, No. 19 of 2011, establish such a court, known as the Environment and Land Court. The jurisdiction of the Environment and Land Court is set out in section 13 of the Environment and Land Court Act. The said court has exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution, relating to environment and land.

5. The scope and jurisdiction of the Environment and Land Court is set out in section 13 of the Environment and Land Court 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.”*

6. Section 13(d) of the Environment and Land Court Act, no doubt, covers leases, being contracts that grant enforceable interests in land. A lease creates an interest in land which enables the lessor to occupy and use the land of the lessee. Any disputes that arise with respect to exercise of that right are disputes that fall within section 13(e) of the Environment and Land Court Act, and, therefore, within the jurisdiction exercisable by the Environment and Land Court, by virtue of sections 2 and 150 of the Land Act.

7. According to the plaint filed at the trial court, the dispute revolved around a lease agreement over Plot No.517 Nambacha, for the purpose of planting sugarcane. It would appear that one of the parties sought to transfer the lease to another party. The party injured by that act then came to court. He claimed costs that he had incurred in ploughing, planting and weeding the cane. All these are matters around use and occupation of land.

8. The High Court no longer has jurisdiction over matters revolving around occupation and use of land. That jurisdiction lies with the Environment and Land Court. I shall accordingly order that the appeal herein be transferred to the Environment and Land Court at Kakamega for disposal. It is so ordered.

DATED, SIGNED and DELIVERED at KAKAMEGA this 29th DAY OF November, 2019

W. MUSYOKA

JUDGE