



REPUBLIC OF KENYA



**Pindoria & another v Patel (Environment & Land Case E031 of 2023)
[2023] KEELC 22041 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 22041 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E031 OF 2023
EK WABWOTO, J
NOVEMBER 30, 2023**

BETWEEN

PREMJI VALJI PINDORIA 1ST PLAINTIFF

JITENDRA VALJI MULJI 2ND PLAINTIFF

AND

PRAMILABEN CHANDRAKANT PATEL DEFENDANT

RULING

1. This ruling is in respect to the Defendant's preliminary objection dated 12th September 2023 which was raised on the following grounds;
 - i. This Honourable Court has no jurisdiction to hear and determine the suit as the transaction between the parties was purely a commercial one.
 - ii. This suit should be struck out/dismissed with costs to the Defendant.
2. The Defendant filed written submissions dated 26th September 2023 in which it was submitted that unlike the Environment and Land Court, the High Court had unlimited original jurisdiction to hear and determine civil suits. Relying on the cases involving *Cooperative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] and *Suzzane Achieng Butler & 4 others v Redhill Heights Investments Limited & Another* [2016], it was submitted that based on the predominant purpose test the Court would not have jurisdiction to handle the matter.
3. The Plaintiffs filed written submissions dated 2nd October 2023 in which it was submitted that the jurisdiction of the Court was well outlined and anchored on Article 162(2)(b) of the *Constitution* and Section 13(1)(e) of the *Environment and Land Court Act*. It was argued that the contract of sale between the Parties extended to the ownership of L.R No 209/4227-IR Number 104341, therefore the dispute essentially related to the title, use and ownership of land belonging to Foam Plastics Ltd.



It was also submitted that if the Court lacked jurisdiction, then an order of transfer of the file to the High Court would be preferable in the interest of justice rather than a dismissal of the suit.

4. Pursuant to the directions issued by this court on 21st September 2023, the preliminary objection was canvassed by way of written submissions which were subsequently filed by both parties and duly considered by this court.
5. I have considered the rival submissions and determined that the only issue for consideration herein is whether this Court has jurisdiction to hear and determine the suit?
6. It is now a well-founded principle that jurisdiction is the most crucial component of a suit. The Supreme Court in the case of *Samuel Kamau Macharia -v- Kenya Commercial Bank & 2 Others*, Civil Appl. No. 2 of 2011, observed that:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. ...Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

7. With regards to the Court of Appeal case of *Cooperative Bank (Supra)*, my interpretation is that the High Court’s jurisdiction is triggered only where accounting issues have been raised in connection to the disposition of land. In this instance, it is undisputed that the dispute stems from a Share purchase Agreement dated 17th July 2020 between the Parties. A perusal of the Plaint dated 20th July 2023 confirms that all orders sought relate to the specific performance of the Share Purchase Agreement such as rescinding of the agreement and repayment of monies paid. It further seeks protection of interests stemming out of the contract through damages. Moreover, I find that based on the prayers sought, the issue of ownership of LR No 209/4227-IR Number 104341 is not a primary issue but one in the peripheries. For this reason, I therefore find that the suit falls squarely within the jurisdiction of the High Court.
8. Having found that the High Court is the appropriate forum for this dispute, I must answer the paramount consequential question on whether the suit should be struck out or dismissed? The Plaintiffs have urged me not to strike out the suit but instead transfer it to High Court. They cite, in their aid, that a transfer would be in the interest of justice.
9. In the case of *Pamoja Women Development Programme & 3 Others v Jackson Kibumbu Wang’ombe & Another* (Kiambu H.C. Civil Suit No. 16 of 2016), Justice Prof. Ngugi (as he then was) faced a similar issue and pronounced himself as follows:

“Kenyans desired specialised courts to deal with certain matters that they felt should be dealt with by these courts with special expertise and repeated experience in the questions they deal with. What Kenyans bargained for, and got in constitutionalizing the two Article 162(2) courts are the benefits associated with the creation of specialized courts in environment and law (as well as employment relations and labour): improved substantive decision making in the two areas fostered by having experts decide complex cases in the two areas and improving judicial efficiency through decreasing the judicial time it takes to process complex cases by having legal and subject-matter experts with repeated experience on the subject-matter adjudicate them. These were the advantages Kenyans bargained for in creating Article 162(2) Equal Status Courts. Kenyans’ objectives was not to set up judicial booby traps for



unsuspecting litigants who after timeously filing and pleading their cases would have to undergo a technical game of jurisdictional Russian Roulette to determine if their case will survive or be struck out. While Kenyans did not wish to give litigants a blank cheque to file suits in the wrong fora in bad faith, they intended to give parties a fair chance to have their cases determined on their merits. This intention is defeated if, in close cases filed in a Court of cognate jurisdiction but where the parties subsequently or the Court makes a determination that the particular Court in which the matter has been filed does not have the requisite jurisdiction and that the requisite jurisdiction lies in a cognate court, the Court responds by striking out the suit and requiring the parties to file a fresh the suit.” [Emphasis Mine]

10. Similarly, in the case of *Spinners & Spinners Limited v Spinners & Spinners Limited* [2017] eKLR, it was held as follows;

“In my view, this incidental concurrent jurisdiction includes the ability of both the High Court and the Equal Status Courts to deal with certain procedural or administrative questions that present quasi-judicial issues where the Court in question is requested to act in the interests of justice or due administration of justice. This is where I would locate the ability of any of the three superior courts of cognate jurisdiction to transfer to the counterpart superior court any case filed before it that would more appropriately be adjudicated in the cognate superior court. Under this incidental concurrent jurisdiction, the High Court was able, for example, to transfer certain matters to the Environment and Land Court and the Environment and Labour Relations Court initially.”

11. In view of the foregoing, I fully associate myself with the sentiments made in the aforementioned decisions, and hereby issue the following orders;
- a. This suit is hereby transferred to High Court (Commercial and Tax Division) and the Deputy Registrar of this Court is directed to facilitate the same.
 - b. Costs will abide the determination of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH NOVEMBER 2023.

E. K. WABWOTO

JUDGE

