



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CIVIL APPEAL CASE NO. 3 OF 2012**

**MONICA WAMBUI KANGANGI.....1<sup>ST</sup> APPELLANT**

**ELIZABETH MUTHONI WAMBU.....2<sup>ND</sup> APPELLANT**

**KAMINA KABUTU KIRANGU.....3<sup>RD</sup> APPELLANT**

**VERSUS**

**GEORGE MAINA MUGO.....RESPONDENT**

**RULING**

1. The appellants **Monica Wambui Kangangi, Elizabeth Muthoni Wambu and Kamina Kabutu Kirangu** filed this appeal against the respondent George Maina Mugo. They were seeking orders that the judgment of the Senior Principal Magistrate Kerugoya in Civil Suit No. 57 of 2010 be set aside and be substituted with an order dismissing the respondent's case with costs.
2. The appeal was admitted for hearing on 8<sup>th</sup> June, 2015. The appeal came up for interpartes hearing on 22<sup>nd</sup> June, 2017. The respondent had filed the case against the appellants claiming a refund of Ksh.750,000/- being the part payment of the purchase price for plot No. 50 Kagumo plus an agreed interest of 30% per annum pursuant to sale agreement dated 24<sup>th</sup> November, 2009.
3. In its judgment which was delivered on 20<sup>th</sup> September, 2012 the Court held that the appellants breached the sale agreement and ordered them to refund the sum of Ksh.750,000 plus interest of 30% per annum. The appellants were dissatisfied with the judgment and filed this appeal.
4. When the matter came up for the counsel for the appellants to highlight the submission, he raised the issue that the matter concerns whether there was a valid land sale agreement and so the matter should be dealt with in the Environment and Land Court.
5. The issue before me is on jurisdiction of this Court to hear and determine the same appeal. It is trite law that jurisdiction is everything and when the question arises the Court seized of the matter must as a matter of prudence enquire into it before doing anything concerning the matter in respect of which it is raised.
6. The '*locus classicus*' on jurisdiction is the celebrated case of **The Owners of the Motor Vessel "Lillians" -V- Caltex Oil Kenya Ltd (1989) KLR 1** where Nyarangi J.A. held:

***"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on***

*the material before it. 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 continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction.”*

7. The appellants pointed out that the matters concerns a contract of sale of land – immovable property. Under **Article 162 (2) (b)** of the **Constitution** it is provided:

*“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to – (b) “the Environment and the use, and occupation of and title to land.”*

This determines the Court with jurisdiction over this matter. Parliament enacted the **Environment and Land Court Act**. **Section 13** of the **Act** provides:

*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 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.*

8. This case clearly falls under **Section 13 (2) (d)** of the **Environment and Land Court Act** since it deals with private property – Land/Plot and Contract. It was stated in the case of **Ernest Kevin Luchidio v Attorney General & 2 others [2015] eKLR**:

*At this point in time, I wish to clearly state that the jurisdiction of the Environment and Land Court is only limited to the disputes contemplated under Article 162(2)(b) of the Constitution and Section 13 of the Act and that if there may be any other disputes which relate to the environment or land but do not fall within the said constitutional and statutory confines, such disputes shall find its way to the High Court instead.*

The originator of the suit before the lower Court was a contract to buy land. **Section 13** of the **Environment and Land Court Act (Supra)** lists contracts among other disputes where the courts established under the Act have jurisdiction. This Court lacks jurisdiction to entertain this appeal

9. The second issue is whether this Court should transfer the suit to Kerugoya Environment and Land Court. In dealing with the issue, Courts have held that if a matter is filed in a court that is devoid of jurisdiction, the same cannot be transferred to a court which has jurisdiction. In this case where the dispute is contract, the High Court had the pecuniary jurisdiction to deal with the matter. It therefore follows that this case can be transferred to the Environment and land Court which has jurisdiction to deal with it. The Court of Appeal has held that it is prudent that where the High Court and Courts under **Article 162 (2)(b)** comes across a matter that should be litigated in any of the courts, it should have the matter transferred to that court. This was held in the case of **Daniel Mugendi -v- Kenyatta University and 3 others (2013) eKLR**, thus:

*“And in order to do justice, in the event where the High Court, the Industrial Court or the Environment and Land Court comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar/equal status should in the spirit of harmonization, effect the necessary transfers among themselves until such time as the citizenry is well-acquainted with the appropriate forum for each kind of claim. However, parties should not file “mixed grill” causes in any court they fancy. This will delay dispensation of justice.*

I am of the view that this is a matter which I should transfer to the Environment and Land Court Kerugoya for hearing and determination. The matter be transferred accordingly as this Court is not seized with jurisdiction to entertain it.

*Dated and delivered at Kerugoya this 19<sup>th</sup> day of September, 2017.*

**L. W. GITARI**

**JUDGE**

19.9.2017

Coram: L. W. Gitari J.,

Mr. Magee for Appellant

Court Assistant Naomi Murage

**ORDER:** The ruling is read out.

L. W. GITARI

**JUDGE**