



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT KERICHO

CIVIL SUIT NO. 20 OF 2016

JULIUS K. KIRUI.....PLAINTIFF

VERSUS

VERONICA CHELANGAT KIBANGA.....DEFENDANT

RULING/DIRECTIONS

(Suit filed in Magistrates Court; suit touching on a land matter; objection to jurisdiction; Magistrate referring the matter to the judge for directions; directions issued that the Magistrates Court does make a determination on the question of jurisdiction which determination can, if need be, be subjected to appeal)

This suit was commenced on **28 January 2016** before the Chief Magistrate's Court at Kericho. The main prayer in the plaint is for an injunction to restrain the defendant from the **land parcel Kericho/Kipchimchim/163** which the plaintiff claims to own. Together with the suit, the plaintiff did file an application for an interlocutory injunction, seeking to restrain the defendant from the suit property pending hearing and determination of the suit.

The respondent did file a response to the said application and the application was argued inter partes before the Honourable J.R. Ndururi Principal Magistrate. One of the points argued in the application was whether or not the court had jurisdiction to entertain the suit. In a ruling delivered on **12 April 2016**, the learned Principal Magistrate held that in light of the orders made in **Malindi High Court Constitutional Petition No. 3 of 2016**, it was not clear whether or not magistrates had jurisdiction to handle matters related to land and environment and thus not clear whether the court could determine the application for injunction. The learned Principal Magistrate then referred the matter to me for directions.

I invited both Mr. Orina for the plaintiff and Mr. Koko for the defendant to make submissions. Mr. Koko submitted that it was wrong for the learned Principal Magistrate to refer the matter to me for directions and ought to have made a ruling on whether or not the court had jurisdiction. Mr. Orina was of a contrary view and was of opinion that there was nothing wrong in the Magistrate asking for directions in the manner that he did.

I have considered the matter. Once a question of jurisdiction is raised by a party, it falls upon the court handling the matter to make a determination on whether or not it has jurisdiction. If it holds that it has no jurisdiction, then the court must down its tools. If it holds that there is jurisdiction, then the court will proceed to handle the matter. It is upon the court handling the matter to determine the question of jurisdiction. That determination is of course appealable by any of the parties, subject to any requirements for leave.

My direction therefore is that the court handling the matter does proceed to make a determination on whether or not it has jurisdiction.

That is my direction to the learned Principal Magistrate.

Dated, Signed and delivered on this 29th day of April, 2016

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

PRESENT:

Ms. Chelimo for Plaintiff

Mr. Koko for defendant

Court Assistant: Mr. Kenei