



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
ELC APPEAL NO. 14 OF 2015

NANCY WANJIKU MUKOMA.....APPELLANT

VERSUS

BERNARD NJOROGE NGUGI.....RESPONDENT

(BEING AN APPEAL FROM THE JUDGMENT DELIVERED ON 29TH JUNE 2015 BY HON. J. WEKESA – R.M AT MURANGA CHIEF MAGISTRATE’S COURT CIVIL CASE NO. 100 OF 2014)

RULING

The Respondent herein **BERNARD NJOROGE NGUGI** sued the Appellant **NANCY WANJIKU MUKOMA** in Muranga Chief Magistrate’s Court Civil Case No. 100 of 2014 seeking a refund of Ksh. 160,000 which had been paid as consideration for the sale of one acre of land out of parcel No. LOC 5/KAGUNDUINI/639 and which the Appellant failed to refund having rescinded the contract.

The Appellant’s defence in the lower Court was that the respondent was infact not a party to that agreement which was between the Appellant and one **LAURAH WAMBUI NGURE** and in any event, it was un-enforceable as the land subject of the agreement belonged to a deceased person one **NJOROGE MUKOMA**. The Appellant therefore denied having received the Ksh. 160,000.

A judgment was delivered therein on 29th June 2015 by **Honourable J. Wekesa** (Resident Magistrate) from which the appellant filed this appeal.

The Respondent has moved this Court under the provisions of **Order 42 of the Civil Procedure Rules** seeking the striking out of the appeal for being in-competent, scandalous and an abuse of the Court process. It is the Respondent’s case that the decree in the lower Court is a money decree and therefore this Court has no jurisdiction as the appeal does not fall under the **Environment and Land Court Act**.

The Appellant on the other hand is of the view that the subject in the lower Court was land and a sale agreement concerning the same and therefore the legal issues touched on land.

I have considered the application, the rival affidavits and submissions by counsel.

The jurisdiction of this Court is set out **under Section 13 of the Environment and Land Court Act** and basically, this Court handles disputes relating to environmental planning and protection, climate issues, land use, title, boundaries, rates, rents, valuation, mining mineral and other natural resources. It also has jurisdiction in matters of compulsory acquisition of land, contracts, choses in action or other instruments granting any enforceable interests in land etc. This Court can of course handle appeals from subordinate Courts and Tribunals relating to ***“contracts or choses in action granting any enforceable interest in land”*** - see **Section 13(2) (d) of the Environment and Land Court Act**.

It is clear from the pleadings in Muranga Chief Magistrate's Court Civil Case No. 100 of 2014 that what the Respondent sought therein was not any interest in land parcel No. LOC 5/KAGUNDUINI/639. The Respondent was not trying to enforce any contract of sale of that land. He was simply seeking a refund of the consideration paid for an agreement that had turned sour. That was purely a monetary claim and the fact that the subject was land does not make it a dispute that comes under the jurisdiction of this Court. Indeed that, explains why it was filed in the lower Court. It is clear to me that this appeal has been filed at the wrong forum.

Having said so, the remedy is not to strike it out as sought by the Respondent. That would not be in keeping with the overriding objectives of the Civil Procedure Act which include the efficient use of available judicial resources to dispose cases expeditiously at a cost affordable to the parties. To strike out this appeal will only increase costs and delay the finalization of this appeal. The order that commands itself to me is to transfer this appeal to the High Court Kerugoya for hearing and final disposal.

Costs shall be in the appeal.

B.N. OLAO

JUDGE

22ND APRIL, 2016

Ruling dated, delivered and signed in open Court this 22nd day of April, 2016

Mr. Macharia for Mr. Njoroge for Respondent present

No appearance by other side.

B.N. OLAO

JUDGE

22ND APRIL, 2016