



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 34 OF 2015

SAMEUL KURIA KINYANJUI.....PLAINTIFF

VERSUS

PETERSON MUTUGI NYAGA.....DEFENDANT

RULING

By his plaint filed herein on 27th March 2015, the plaintiff sought judgment against the defendant in the following terms:-

1. ***Ksh. 476,100 consideration.***
2. ***Ksh. 142,830 liquidated interest.***
3. ***Costs of this suit.***
4. ***Interest.***

The genesis of this suit is a sale agreement dated 22nd December 2009 by which the defendant agreed to sell to the plaintiff 1 ½ acres out of land parcel No. MWERUA/KAGIO/324 at a price of Ksh. 535,000 but which the defendant breached hence this suit.

The defendant filed a defence on 18th May 2015 in which he denied those averments adding that it was the plaintiff who defaulted in effecting payment and thus rendering the agreement null and void and that a Preliminary Objection would be taken at the hearing of this suit.

There is an amended defence filed on 12th June 2015 without leave. **Order 2 Rule 13 of the Civil Procedure Rules** provides as follows:-

“The pleadings in a suit shall be closed fourteen days after service of the reply or defence to counter-claim, or if neither is served, fourteen days after service of the defence, notwithstanding that any order or request for particulars has been made but not complied with”

No doubt that provision prompted the plaintiff’s advocate to file a Notice of Objection to that defence arguing that it be struck out for being filed without leave. However, that objection is not before me now. What has been raised by the defendant in paragraph four (4) of the defence filed herein on 18th May 2015 is the Preliminary Objection that this suit is an abuse of the Court process and bad in law. In their submissions however, counsel have addressed the issue of this Court’s jurisdiction to handle this suit. It is the defendant’s argument that this is a specialized Court relating to the environment and use, occupation of and title to land and since the plaintiff’s claim is not over any parcel of land, this Court has no jurisdiction. Further, this claim can be heard by the Resident Magistrate’s Court whose pecuniary jurisdiction is upto Ksh. 2,000,000. The defendant therefore urges this Court to strike out the plaint.

The plaintiff submits however that the dispute arises out of an agreement for the purchase of land and this Court therefore has jurisdiction.

The Preliminary Objection therefore touches on the jurisdiction of this Court. That is a matter of law and therefore it is a proper issue to raise as a Preliminary Objection as was held in the case of **MUKHISA BISCUIT COMPANY LTD VS WEST END DISTRIBUTORS 1969 E.A 896 in which Law J.A** said:-

“.....a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a Preliminary Objection may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”

Once an issue of jurisdiction is raised, it must be disposed of at the earliest opportunity because if a Court has no jurisdiction over the dispute before it, then it must down its tools – see **OWNERS OF MOTOR VESSEL ‘LILLIAN SS’ VS CALTEX OIL (K) LTD 1989 K.L.R 1**

What gave rise to this dispute is an alleged breach of contract of sale of land parcel No. MWERUA/KAGIO/324. This is clear from paragraph 8 of the plaint where the plaintiff has pleaded as follows:-

“The plaintiff avers that the defendant breached the agreement as follows:”

The plaintiff then proceeds to particularize how the contract was breached. **Section 13 (2) of the Environment and Land Court Act** provides as follows:-

“In exercising of its jurisdiction under Article 162 (2) of the Constitution, the Court shall have power to hear and determine disputes

- a.
- b.
- c.
- 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***” (emphasis added).

It cannot be correct therefore, as submitted by counsel for the defendant, that this Court lacks the jurisdiction to determine this dispute. It is clear from the provisions of **Section 13 (1) and (2) of the Environment and Land Court Act** that this Court has the requisite jurisdiction to hear a dispute relating to a contract over land and this dispute, as I have indicated above, arises out of an alleged breach of contract to sell land.

The defendant has also submitted that this dispute can be handled by a subordinate Court of the Resident Magistrate whose pecuniary jurisdiction is Ksh. 2,000,000. That is correct. Indeed a suit should ideally be filed in the lowest Court that has the requisite jurisdiction to determine it. I am of course aware that following the establishment of this Court, many parties and even counsels have been of the mistaken belief that only this Court has the jurisdiction to determine land disputes. My view has been that that is not correct and on that, I agree with counsel for the defendant that this suit could well have been filed in the Resident Magistrate’s Court. I hope that with the recent amendments to the **Environment and Land Court Act** contained in **Act No. 25 of 2015**, that confusion will now be a thing of the past. However, the fact that a subordinate Court has jurisdiction over this dispute does not take away this Court’s jurisdiction to determine this dispute. And to avoid any further delays in determining this dispute and keeping in mind the overriding objectives of the **Civil Procedure Rules** which are to facilitate the just, expeditious, proportionate and affordable resolutions of disputes, I direct that this dispute be heard in this Court and to that end, counsels are ordered to expedite in the compliance with the provisions of **Order II Civil Procedure Rules** in order to expedite the trial.

The Preliminary Objection on this Court's jurisdiction is however dismissed with costs.

B.N. OLAO

JUDGE

22ND APRIL, 2016

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

Mr. Macharia for Mr. Kiama for Plaintiff present

No appearance for Defendant.

B.N. OLAO

JUDGE

22ND APRIL, 2016