



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MIGORI**

**CIVIL APPEAL NO. 17 OF 2016**

**JOHN MOBWE MWITA .....APPELLANT**

**VERSUS**

**PETER MURIMI MWITA..... RESPONDENT**

*(Being an appeal from the judgment and decree by Hon. Nyagah Senior Resident Magistrate in Migori Principal Magistrate's Civil Case No. 647 of 2015 delivered on 07/04/2016).*

**RULING**

1. The Appellant filed his Memorandum of Appeal together with a Notice of Motion seeking a stay of execution of the judgment delivered by the lower court.
2. When the application eventually came up for hearing, the Respondent's Counsel raised an objection to the jurisdiction of this Court. The Appellant's Counsel, rightly so, conceded to the issue of jurisdiction and prayed that the appeal be instead transferred to the Environment and Land Court for further dealing. The Respondent's Counsel opposed the transfer on the ground that since the appeal was filed in a wrong Court then this Court even lacks the jurisdiction to transfer the appeal. He prayed that the appeal together with the application be struck out with costs. That is the brief background upon which this ruling is premised on.
3. As correctly pointed out and readily agreed, the appeal was to be filed before the Environment and Land Court. Since jurisdiction is everything and without it a Court of law cannot even make a single forward move, it therefore follows that the matter halts there. (See the Court of Appeal cases of **The Owners of Motor Vessel "LILIAN "S" -vs- Caltex Oil Kenya Ltd (1989) 1 KLR 1** and **Kakuta Maimai Hamisi -vs- Peris Pesi Tobiko & 2 Others (2013) eKLR** among others).
4. As to whether the appeal should be struck out with costs, I find that to be the best way forward in this matter. I say so because this is an appeal on a land matter and the matter was fully heard and determined before the lower court. I would have taken a different position if the matter was not an appeal and if in that matter there were cross-cutting issues between this Court and the Environment and Land Court. In arriving at that finding I am alive to the fact that the appellant reserves his right to prefer the appeal before the proper Court.
5. Consequently the appeal and the Notice of Motion dated 17/04/2016 be and are hereby struck out with costs.

**DATED, SIGNED and DELIVERED at MIGORI this 20<sup>th</sup> day of July 2016.**

**A. C. MRIMA**

**JUDGE**