



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VOI
CIVIL APPEAL NO 11 OF 2015

CHRISTINE NAFULA JUMA.....APPELLANT

AND

BEATRICE CHIRINDO TSUMA.....RESPONDENT

(Being an appeal from the Judgment of Senior Principal Magistrate Voi delivered on 21st day of April (sic) by Honourable S.M. Wahome)

IN

SRMCC NO 165 OF 2013 (sic)

BEATRICE CHIRINDO TSUMA.....PLAINTIFF

VERSUS

CHRISTINE NAFULA JUMA.....DEFENDANT

JUDGMENT

INTRODUCTION

1. By a Plaint dated and filed on 9th December 2013, the Respondent stated that she was the owner of Plot No 432 Bomani Phase II Settlement Scheme in Voi having been gifted the same by one Daniel Kilungu. She stated that one Xavier Juma was her tenant in the year 2009 when he went missing and was later said to have died in Kwale.

2. However, the Appellant, who was the said tenant's mother, issued notices to her and other tenants in the said property on the basis that the said property belonged to the said tenant, claims which she said was a figment of the Appellant's imagination. She therefore sought the following reliefs in her Plaint:-

a. Orders declaring the said Plot No 432, Bomani Phase II Settlement Scheme to be the Plaintiff's and permanently forbidding the Defendant to ever lay a claim on it.

b. Costs.

c. Interest.

3. In her Defence and Counter-Claim dated 25th February 2015 and filed on 26th February 2015, the

Appellant sought the following reliefs:-

- a. That the plot and the development on Plot No 432 Bomani Phase II Settlement Scheme is the property of Xavious Wandera Juma.**
- b. That the Defendant (sic) be evicted from Plot No 432.**
- c. Mens (sic) from the date of filing suit in court until the date of vacating.**
- d. Costs of the suit to be provide (sic) for.**

4. In his judgment delivered on 21st April 2015, Hon S.M. Wahome, Senior Principal Magistrate entered judgment in favour of the Respondents against the Appellant in the following terms:-

- a. THAT the Plaintiff is hereby declared the owner of Plot No 432 Bomani Phase II Settlement Scheme permanently forbidding the Defendant ever to lay a claim on it.**
- b. THAT the Defendant Counterclaim is hereby dismissed.**
- c. THAT each party to pay its costs.**

5. Being dissatisfied with the Judgment of the said Learned Trial Magistrate, the Appellant filed her Memorandum of Appeal dated 19th May 2015 on the same date. The grounds of appeal were as follows:-

- a. THAT the Trial Magistrate erred in law and fact by finding that the suit property belonged to the plaintiff.**
- b. THAT the Trial Magistrate erred in law and fact by failing to consider the evidence of the defendant's witnesses and especially the neighbours and the contractor who put up the building.**
- c. THAT the Trial Magistrate erred in law and fact by failing to consider the Defendant's submissions and yet they were on record at the time he delivered his judgment.**
- d. THAT the Trial Magistrate erred both in law and fact by failing to give reason (sic) for his judgment.**
- e. THAT the Trial Magistrate erred in law and in fact by failing to analyze the evidence before him so as to arrive at a decision in favour of the defendant.**
- f. THAT the Trial Magistrate erred in law and in fact by failing to find that the evidence on record did not support his findings.**
- g. THAT the Trial Magistrate erred both in law and in fact by failing to consider the evidence before him to arrive at a decision infavour (sic) of the defendant.**

6. The Appellant's Record of Appeal was dated and filed on 5th October 2015. Her Written Submissions were dated 2nd September 2016 while those of the Respondent were dated and filed on 6th September 2016. Although the Appellant was given an opportunity to respond to the Respondent's Written Submissions on 8th September 2016, she did not do so.

7. When the matter came before the court on 15th September 2016, the parties' advocates requested for a Judgment date herein having relied entirely on their respective Written Submissions. This Judgment is therefore based on the said Written Submissions.

LEGAL ANALYSIS

8. Having looked at the Appellant's grounds of appeal and the parties' respective Written Submissions, it was clear from the evidence that was adduced before the Trial Court that both the Appellant and the Respondent laid a claim to the said suit premises each stating that they had purchased the same. The question that was before this court therefore was to determine, on appeal, who between the Appellant and the Respondent was the owner of Plot No 432 Bomani Phase II Settlement Scheme (hereinafter referred to as "the suit premises").

9. Although neither of the parties raised the issue, the question then that arose in the mind of this court was whether or not it had jurisdiction to hear and determine the appeal herein bearing in mind the provisions of Article 165(5)(b) of the Constitution of Kenya, 2010 that specifically states as follows:-

"The High Court shall not have jurisdiction in respect of matters... falling within the jurisdiction of the courts contemplated in Article 162(2)."

10. Article 162(2) (b) of the Constitution of Kenya provides as follows:-

"Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to...the environment and the use and occupation of, and title to land."

11. Pursuant to the provisions of Article 162(3) of the Constitution of Kenya that provides that Parliament shall determine and contemplate the jurisdiction and functions of the said courts, the Environment and Land Court Act Cap 12A (Laws of Kenya) was enacted.

12. Section 13 of the Environment and Land Court Act stipulates as follows:-

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 dispute relating to environment and land.

13. It was therefore evident that despite this appeal having been admitted for hearing in this court by Mureithi J on 6th July 2015, it does not have jurisdiction to hear and determine the appeal herein. The lack of jurisdiction of the High Court to hear appeals emanating from magistrates' courts in land matters was a position that was well articulated by Angote J in the case of **Kibwana Ali Karisa & Another vs Said Hamisi Mohammed & Others [2015] eKLR** where he agreed with the pronouncement of Lenaola J in **NRB Petition No 72 of 2013 Edward Mwaniki Gatura & Another vs The AG & 2 Others** where he had stated as follows:-

"...It therefore follows, that the Magistrate's courts have jurisdiction to determine matters

falling within the Jurisdiction of the Environment and Land Court Act and their decision will be subject to appeals preferred to the Land and Environment Court..’

14. Appreciably, any determination of the appeal herein on merit will be *ultra vires* the Constitution of Kenya for the reason that this court cannot make a determination without enquiring into the question of ownership, occupation and possession of the suit premises which is well within the province of the Environment and Land Court.

15. As this court lacks jurisdiction, it has no option but to down its tools and transfer the Appeal herein to the Environment and Land Court at Mombasa for hearing and determination.

DISPOSITION

16. For the foregoing reasons, this court hereby directs as follows:-

a. THAT for the reason that there is no Environment and Land Court in Voi, the Appeal file and the lower court record be and are hereby transferred to the Environment and Land Court Mombasa for hearing and determination.

b. THAT the Appeal file and be placed before the judge in the Environment and Land Court Mombasa on 8th November 2016 for further orders and/or directions.

c. THAT there shall be no order as to costs.

17. It is so ordered.

DATED and DELIVERED at VOI this 27th day of October 2016

J. KAMAU

JUDGE