



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 598 OF 2014

MANJU NAUL.....PLAINTIFF

VERSUS

GEORGE MACHEHO MUNGAI.....1ST DEFENDANT

STEPHEN MUNGAI S. KAMAU.....2ND DEFENDANT

OPINDER SINGH NAUL.....3RD DEFENDANT

RULING

INTRODUCTION

1. Before the Court is the 1st and 2nd Defendant's Preliminary Objection dated 14th January 2015 and filed on even date. The Defendants have raised a Preliminary Objection to the Plaintiff's Notice of Motion dated 18th December 2014 and the suit herein on the following grounds:-

1. *The Notice of Motion dated 18th December 2014 and the suit herein ought to be dismissed with costs to the 1st and 2nd Defendants as this Honourable Court sitting as the Commercial and Admiralty Division has no jurisdiction to hear and determine the said Motion and suit by dint of Article 162 (2) (b) as read with section 13 (1) of the Environmental and Land Court Act, 2012, Act No. 12A of 2012.*
2. *There is an established Environmental and Land Court by operation of the Environmental and Land Court Act, 2012, Act No. 12A of 2012 which adjudicates on ALL disputes over land.*
3. *Notwithstanding the objection stated in the foregoing paragraph, the suit herein is time barred and prayer (c) therein, being the primary prayer in the suit, is manifestly not capable of grant, and ought to be struck out for violating section 4 (1) of the Limitation of Actions Act, Cap 22.*

The dispute herein is therefore wrongly before this Honourable Court, being the Commercial and Admiralty Court.

4. *The suit is an abuse of the Court process:*

- a. ***No summons to Enter Appearance have been taken out, and if any have so been taken out, no such summons to enter appearance have been served on the 1st and 2nd Defendants, in violation of Order 5 Rule (1) and (5) of the Civil Procedure Rules, 2010.***
- b. ***No cause of action lies where Order 3 Rule 2(d) of the Civil Procedure Rules has been violated, in that No exhibits have been produced in the alleged proof of the Plaintiff's claim thereof.***

The Plaintiff has consistently stamped as her exhibits blank green pieces of paper in violation of Rule 9 and 10 of the Oaths and Statutory Declarations Act, Cap 15.

5. ***The suit is frivolous***

2. The above are the points of law as raised by the 1st and 2nd Defendants. The 1st and 2nd Defendants also filed written submissions dated 14th January 2015 in support of the Preliminary Objection.
3. In opposition to the Preliminary Objection, the Plaintiff filed written submissions dated 30th January 2015 on even date.

ANALYSIS

4. The Preliminary Objection was prosecuted by way of written submissions which were briefly highlighted in Court by Counsel for the respective parties.
5. I have considered the Preliminary Objection as well as the written submissions by Counsel in support and in opposition to the same. Having done so, I take the following view of the matter.
6. The Law on Preliminary Objections is well settled as was held by JA and Sir Charles Newbold P. in ***Mukisa biscuits manufacturing co ltd vs West end distributors (1969) EA 696***. At page 700, Law, JA stated that:

“...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 point 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.”

7. I will start with the issue of Jurisdiction as the determination of the rest of the points of law is actually dependent on it. As was held in the case of ***The owners of the motor vessel “lillian s” vs caltex oil (kenya) ltd (1989) klr***, Jurisdiction is everything and without it a Court cannot make a step.
8. The 1st and 2nd Defendants’ submission is that in filing her claim before this Division, the Plaintiff has violated the imperative of Article 162 (2) (b) of the Constitution. The provisions in the aforesaid Article is to the effect that all matters dealing with the use and occupation of title to land should be heard and determined by a Special Court with the Status of the High Court, created through an Act of Parliament. The Special Court in this case is the Environment and Land Court established under Section 13(1) of the Environment and Land Court Act, Act No. 12A of 2012.
9. I have perused the Suit herein as well as the Notice of Motion dated 18th December 2014. From the pleadings and in particular the prayers in the Plaint, it is clear that the matter has to do with the ownership of the suit property therein. The Plaintiff is contesting the transfer of the suit property to the 1st and 2nd Defendants and therefore claims interest in the said property.
10. It is the Plaintiff’s position that under Article 165 (3) (a) of the Constitution, this Court has original and unlimited jurisdiction in all civil matters and therefore that this Court has jurisdiction to determine the current matter. That is correct. However, there is Article 165 (5) of the Constitution which expressly states that this Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the Courts contemplated in Article 162 (2).
11. Accordingly, and in light of Article 162 (2) (b) of the Constitution as well as section 13 (1) of Act No. 12A of 2012, I am of the view that this suit falls within the purview of the Environment and Land Court. In the circumstances, the said Court has jurisdiction to determine this matter.

12. In light of the foregoing, I do not find it necessary to determine the other points of law as raised by the 1st and 2nd Defendants.
13. The upshot of this Ruling is that the 1st and 2nd Defendant's Preliminary Objection is allowed as regards the issue of jurisdiction.
14. Without such jurisdiction this court cannot make any further orders in this matter except that the costs occasioned by the suit and the application shall be for the Defendants/Respondents and that interim orders herein are lifted forthwith.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 15TH DAY OF MAY 2015

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Kang'ethe for the Plaintiff

Mr. Kinyanjui for the 1st and 2nd Defendants

Mr. Kangatha holding brief for Kandere for the 3rd Defendant

Teresia – Court Clerk