



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL CASE NO. 2182 OF 1995

WAMERE HELEN MWANGI DADETPLAINTIFF

VERSUS

DAVID NJOGU GACHANJA.....DEFENDANT

RULING ON JURISDICTION OF THE HIGH COURT

This suit was instituted on 11th July 1995 vide a plaint dated 10th July 1995. The plaintiff Wamere Hellen Mwangi Dadet sued the defendant David Njogu Gachanja claiming for judgment and orders:

a) Restraining the defendant either himself, his servants and or agents from transferring, disposing or interfering with the plaintiffs peaceful enjoyment and or quiet possession of the plaintiffs properties title numbers;

- 1) Ruiru/Ruiru East Block 7/3
- 2) Ruiru/Ruiru East Block 7/82
- 3) Ruiru/Ruiru East Block 7/81
- 4) Ruiru/Ruiru East Block 7/154

b) A declaration that the court orders in RM CC 760 of 1994 was obtained irregularly, through fraud and without jurisdiction and that the same be declared null and void for all intents and purposes.

c) In the alternative and without prejudice an order that the Executive Officer, Sheria House be compelled to produce the court file in RM CC 760 of 1994 for further orders.

d) A declaration that the transfer of the plaintiffs plot Nos

- i. Ruiru/Ruiru East Block 7/3
- ii. Ruiru/Ruiru East Block 7/82
- iii. Ruiru/Ruiru East Block 7/81

iv. Ruiru/Ruiru East Block 7/154

by the defendant to himself was done through fraud and an order directing the Land Registrar, Kiambu to cancel/annul the said transfers and reinstate the plaintiff's name as the lawful proprietor of the said plots.

e) A declaration that no consent of the Land Control Board having been obtained by the defendant the purported transfer to the defendant is null and void.

f) General damages.

g) Any other/further relief that this Honourable court may deem appropriate.

h) Costs and interest.

From the above pleadings, it is trite that the claim before this court and which has been pending for over 20 years undetermined, relates to title, use and occupation of land.

Albeit the suit was instituted in this court at a time when the court had the jurisdiction to hear and determine the dispute as disclosed in the prayers above, that position significantly changed with the promulgation of the Constitution on 27th August 2010 vide Article 162(2) (b) of the Constitution which contemplates the establishment of a court, a superior court with the same status as the High Court, with jurisdiction to hear and determine disputes relating to...(b) the environment and the use and occupation of and title to land.

That provision is followed by Sub Article (3) which commands Parliament to determine the jurisdiction and functions of the said court.

In 2011, Parliament implemented the above provisions of the Constitution by enacting the Environment and Land Court Act, 2011 and the court is anchored in Section 4 of the said Act.

Under Section 13(1) of the Act, the court is conferred with both original and appellate jurisdiction to hear and determine disputes as contemplated in Article 162(2) (b) of the Constitution and as may be conferred by any other written law. Such law includes the Land Act, 2011 and Land Registration Act, 2011.

Under Section 13(7) of the Environment and Land Court Act the court is empowered to make orders including:

- Declaratory orders.
- Judicial Review.
- Specific performance.
- Injunctions
- damages

In addition, Article 165(5) b of the Constitution expressly bars the High Court from hearing and determining disputes that fall within the jurisdiction of the Environment and Land Court as contemplated in Article 162(2) (b) of the Constitution.

The above being the position, this court must first therefore determine whether it has the jurisdiction to hear and determined this dispute.

It is worth noting that the jurisdiction of the High Court is conferred by Article 165 (5) of the Constitution, which Article also excludes certain jurisdiction from the court. Further, jurisdiction can only be conferred by the Constitution or other written law and not parties and neither can the court arrogate itself jurisdiction that it does not possess as that would in effect be acting contrary to the very

Constitution and principles.

The locus classicus on jurisdiction is the often quoted case of **Owners of the Motor Vessel "Lilian S" V Caltex Oil (Kenya) Ltd (1989) KLR 1**

Where Nyarangi JA held:-

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction".

This court holds the opinion that it is without jurisdiction to hear and determine this dispute as the jurisdiction is ousted by the Constitution and expressly given/conferred onto another court of competent jurisdiction.

That being the case, albeit the suit herein was instituted before the effective date and therefore the transitional and consequential provisions of the Constitution under part 5 Section 22 thereof on Administration of Justice would be applicable, namely, that all proceedings pending before a court or tribunal shall be heard and determined or as may be directed by the Chief Justice or Registrar of the High Court pending the establishment of a corresponding court or tribunal, in the transition. I say so because the Environment and Land Court was established and competent judges duly appointed to the said court thereby fully operationalising the court. It therefore follows that this matter has been hibernating in a wrong habitat.

I have stated previously, while dealing with similar matters as this case not once, not twice that there is need for proper organization and management of our court records and registries, with the staff being sensitized and enabled to establish a clearing house for cases that are not supposed to lie in the High Court to be taken to the right court.

Without that action, we shall continue to archive old cases that ought to be disposed of expeditiously elsewhere thereby violating the very Constitutional principles espoused under Article 159 of the Constitution, that justice shall be administered without undue delay. We will in addition forever have in our records the so called backlogs that is not real.

From the foregoing propositions, and as I have found that this court lacks the requisite jurisdiction to hear and determine this dispute since the transitional provisions of the Constitution are now spent and ousted by Article 165(5)(b) of the Constitution by the full operationalization of the Environment and Land Court which is the corresponding court, I down my tools and direct that this whole suit in its many volumes shall forthwith be transmitted to the Environment and Land Court for further directions as to its hearing and final disposal.

The matter shall therefore be mentioned on 16th October 2015 before the Presiding Judge of Environment and Land Court for such directions as may be deemed fit.

Dated, signed and delivered suo motu in open court at Nairobi this 23rd day of September 2015.

R.E. ABURILI

JUDGE

23/9/2015