



REPUBLIC OF KENYA
IN THE HIGHCOURT OF KENYA AT MIGORI

CIVIL APPEAL NO. 94 OF 2015

SONY SUGAR COMPANY LIMITED APPELLANT

VERSUS

SAMUEL M. ROBIRESPONDENT

RULING

1. When this appeal came for hearing on 16/09/2015, although the Respondent did not make an appearance, the Court on its own motion and in order to satisfy itself that it has the requisite jurisdiction to deal with the appeal directed parties to address it on that aspect. That is, whether the appeal was to lie before the High Court or the Environment and Land Court.
2. Parties filed written submissions which they briefly highlighted in urging this Court to find that it is seized of the jurisdiction to hear and determine this appeal.
3. The genesis of the appeal is a dispute between a farmer and a miller relating to an arrangement entered into on growing and harvesting of cane. That arrangement was eventually reduced into writing. As a result of breach of the said understanding the dispute was referred to the Sugar Arbitration Tribunal under the repealed Sugar Act, 2001.
4. The said Tribunal dealt with the matter but before concluding it, the Sugar Act, 2001 was repealed and the said matter among such others was referred to the subordinate Court for further hearing. That is how the Chief Magistrate's Court at Migori was seized of that matter.
5. Arising out of the judgment delivered on 30/04/2015 by the lower Court, the Appellant herein, then Defendant **SOUTH NYANZA SUGAR CO LTD**, preferred an appeal to this Court. That is the background upon which this Court raised the issue of jurisdiction.
6. It has been held, times without number, that jurisdiction is everything and without it a Court of Law cannot make a further single step. The Supreme Court in the decision of **Re: The matter of the Interim Independent Electoral Commission, Constitutional Application No. 2 of 2011** at paragraphs 29 and 30 discussed the issue of jurisdiction in the following manner:-

“29. Assumption of jurisdiction by courts in Kenya is a subject regulated by the constitution; by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel ‘Lilian S’ vs. Caltex Oil (Kenya) Limited (1989) KLR 1, which bears the following passage (Nyarangi, JA at page 14.):-

“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.”

30. The Lilian ‘S’ case establishes that jurisdiction flows from the law, and the recipient – Court is to apply the same, with any limitations embodied therein. Such a court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.”

7. Jurisdiction to deal with a matter must therefore be specifically conferred by either the Constitution, statute law and/or the principles as laid out in judicial precedents. It cannot however be vested upon a Court otherwise; even by the consensus of the parties.
8. The issue under consideration here is whether it is the High Court or the Environment and Land Court which is legally vested with the jurisdiction to hear and determine this particular type of appeals which arises from dealings between a farmer and a miller relating to a dispute on a contract on cane growing and supply.
9. It is settled that under **Article 165(3)** of the Constitution the High Court exercises an appellate jurisdiction as it may be conferred upon it by any legislation. However **Article 165(5)** of the Constitution makes it crystal clear that the jurisdiction of the High Court, be it original or appellate, will not extend to matters that are:-

(a) reserved for the exclusive jurisdiction of the Supreme Court under the Constitution; and

(b) falling within the jurisdiction of the courts contemplated in Article 162(2).”

10. **Article 162(2) and (3)** of the Constitution provides as follows:

“162(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to -

(a) employment and labour relations; and

(b) the environment and the use and occupation of, and title to, land.

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).”

11. Arising from the said constitutional mandate, Parliament enacted the Environment and Land Act, Chapter 12A of the Laws of Kenya (hereinafter referred to as “**the Act**”). The Act creates the jurisdiction of the Environment and Land Court in **Section 13** thereof and as follows:-

13.(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 written law 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 relating to environment and land, including disputes?

(a) relating to environmental planning and protection, trade, 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 other dispute relating to environment and land.

3. Nothing in this Act shall preclude the Court from hearing and determining and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to the environment and land under Articles 42, 69 and 70 of the Constitution.

(4). In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

(5) Deleted by Act No. 12 of 2012, Sch.

(6). Deleted by Act No. 12 of 2012, Sch

(7). In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including?

(a) interim or permanent preservation orders including injunctions;

(b) prerogative orders;

(c) award of damages;

(d) compensation;

(e) specific performance;

(g) restitution;

(h) declaration; or

(i) costs. (emphasis added)

12. From the foregoing, it can be clearly seen that the jurisdiction of the Environment and Land Court is only limited to the disputes contemplated under **Article 162(2)(b)** of the Constitution and **Section 13** of the Act. It is therefore right to hold, which I hereby do, that if there may be any other disputes which relate to the environment or land but do not fall within the said constitutional and statutory confines, such disputes shall find its way to the High Court instead. To this end, I fully concur with my brother Mabeya, J in Capital Fish Kenya Limited vs. Monnatz Limited & 2 others (2014) eKLR when he expressed himself thus:-

“..... In this regard, my view is that the intention in the Constitution is that if an issue arises touching on land in respect of its use, possession and control, then this High Court will have no jurisdiction. If the dispute touching on land is for anything else other than which I have stated, my view is that, that dispute will

be outside the jurisdiction of the Land Court”

13. It is not in doubt that under **Section 13(1)** of the Environment and Land Act, the Environment and Land Court has original as well as appellate jurisdiction.

14. In a bid therefore to unravel the jurisdictional issue, it is imperative to have a look at the wording of the Constitution as well as the Environment and Land Act in constituting that specialized Court.

15. Under **Article 162(2)(b)** of the Constitution, the key words used are “***use, occupation and title.***”

The Black’s Law Dictionary 8th Edition, 2004 define the said terms as follows:-

***“Use.....1. The application or employment of something especially long-continued possession and employment of a thing for the purpose for which it is adopted as distinguished from a possession and employment that is merely temporary or occasional*”**

“Occupation” is defined as the possession, control or use of real property.

“Title” is defined as:-

1. The union of all elements (as ownership, possession and custody) constituting the legal rights to control and dispose of property, the legal link between a person who owns a property and the property itself ...”

I do note that the terms “use and occupation of” were used conjunctively and not disjunctively.

16. Section 13(2)(d) of the Environment and Land Act deals with the issue of contracts in respect to land in the following manner: -

“13 (2).....

(d) relating to public, private and community land and contracts, choses in action or other instants granting any enforceable interests in land; and (emphasis added).”

15. I have carefully addressed my mind to the genesis of this appeal. I have equally perused the pleadings and the evidence tendered before the Tribunal as well as the judgment of the lower Court upon which this appeal is against. I have further read the parties’ submissions filed on this particular aspect of jurisdiction as well as the various judicial authorities referred therein.

16. Looking at the foregoing definitions of the words “***use, occupation and ownership***” on one hand and the substance of the matters in dispute in this appeal on the other hand, it can be safely held that the issues in dispute do not deal with the use, occupation or ownership of the land in issue. Further, looking at the contract between the parties and the provisions of **Section 13(2)(d)** of the Environment and Land Act side by side, it is clear that the contract in issue ***does not grant any enforceable interests in the land in issue.*** The contract in this case is hence not among those contemplated in the said **Section 13(2)(d)**. This appeal therefore falls outside the mandate of the Environment and Land Court. It is in the domain of the High Court.

17. The appeal shall be henceforth listed for hearing and since the same issue was argued in ***Migori High Court Civil Appeal No. 18 of 2015 South Nyanza Sugar Co Ltd =vs= Awino Oreilo, Migori High Court Civil Appeal No. 18 of 2015 South Nyanza Sugar Co Ltd =vs= Awino Oreilo, Civil Appeal No. 89 of 2015 Collins Otieno Okoth =vs= South Nyanza Sugar Co Ltd, Civil Appeal No. 104 of 2015 Cleophas Oridi =vs= South Nyanza Sugar Co Ltd, Civil Appeal No. 96 of 2015 South Nyanza Sugar Co Ltd =vs= Simeona A. Opola, Civil Appeal No. 80 of 2015 South Nyanza Sugar Co Ltd =vs= Magaiwa Mwita Ngunya, Civil Appeal No. 92 of 2015 James Maranya Mwita =vs= South Nyanza Sugar Co Ltd*** this ruling shall equally apply in the

said matters.

18.Orders accordingly.

DATED, SIGNED and DELIVERED at MIGORI this 29th day of OCTOBER, 2015

A. C. MRIMA

JUDGE

In the presence of:

Mr. Maganga for Mr. Kerario for the Respondent

Advocate for the Appellant Absent

Court Clerk Ojwang