



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC APPEAL NO. 16 OF 2020

GEOFFREY MACHARIA MURAYA.....APPELLANT

-VERSUS-

NELSON NZIOKI KIMEU

ABIGAIL NDANU KYALO

(Suing in their capacity as the Administrators of the

Estate of CHARLES KYALO KIMEU (Deceased).....RESPONDENTS

(Being an Appeal from the Ruling of the Chief Magistrate's Court at Machakos

in CMC ELC NO. 21 of 2019 delivered on 24th November 2020

by Hon. C. A. Ocharo SPM)

JUDGMENT

BACKGROUND

1. The Respondent herein filed a plaint dated 27th February 2019 in Machakos CMCC ELC No. 21 of 2019 seeking the following orders;
 - a) A declaration that the suit property is still duly registered in the name of the Deceased and should remain so.
 - b) A declaration that the transfer of the suit property from the Deceased to the 2nd Defendant and the subsequent transfer by the 2nd Defendant to the 1st Defendant is null and void.
 - c) A declaration that the title deed issued to the 1st Defendant pursuant to the alleged transfer is null and void as the same was obtained from a party who was incapable of passing good title.
 - d) An order compelling the 3rd Defendant to rectify the register to restore the name of the deceased and recall the title in the name of the 1st Defendant for cancellation.
 - e) A permanent order of injunction restraining the 1st Defendant/Respondent either by himself, his servants, employees and/or agents from entering, trespassing, alienating, developing and/or in any way dealing with title No. DONYO SABUK/KOMAROCK BLOCK 1/12377.
 - f) General damages.
 - g) Costs of this suit.
 - h) Any such other or further orders as this court may deem fit and just to grant.

2. On 27th February 2019, the court issued a temporary injunction against the Defendants, upon consideration of the Respondent's Notice of Motion dated even date.

3. By a defence dated 20th March 2019, the 1st Defendant, now the Appellant herein, denied the Respondent's claim and stated in paragraph 14 that the court did not have jurisdiction to entertain the suit as the fair and market value of the subject parcel of land would well exceed the pecuniary jurisdiction of the honourable court.

4. Subsequently, by a Notice of Motion dated 4th November 2019, the 1st Defendant sought to set aside the orders made on 27th February 2019 and sought to have the Plaintiff's suit struck out with costs on grounds that the court lacked pecuniary jurisdiction to determine the matter as the value of the subject matter exceeded Kshs. 30,000,000/-, while the Magistrate's courts pecuniary jurisdiction is capped at 20,000,000/-.

5. As there was no evidence to show the value of the subject matter, the court ordered the parties to carry out the valuation of the suit land namely L.R. NO. DONYO SABUK/KOMAROKBLOCK 1/12377. The plaintiff's valuation thereof was Kshs. 18,000,000/- while the 1st Defendant's valuation was Kshs. 30,400,000/=. Faced with the rival valuations showing a discrepancy of over 12,000,000/-, the court sought to have the valuation done by a neutral person and directed that a valuation be undertaken by a Government valuer. The Government valuer valued the suit property at Kshs. 18,000,000/-.

6. In determining the Notice of Motion dated 4th November 2019, the learned trial Magistrate made a ruling on 21st November 2020 in which she noted that as the Government valuer demonstrated that the value of the subject matter was Kshs. 18,000,000/-, by dint of section 7 (1) of the Magistrates Act, the Magistrates Court had jurisdiction to determine the matter. The trial magistrate however noted that since she was a Senior Principal Magistrate with a pecuniary jurisdiction capped at 15,000,000/-, she had no jurisdiction to hear and determine the matter. She proceeded to set aside the orders issued on 27th February 2019 for having been granted without jurisdiction. She however further held that the matter was within the jurisdiction of the Magistrates Court, and therefore referred the matter to the Chief Magistrate for directions.

7. The 1st Defendant/Appellant being dissatisfied with the decision of the trial magistrate made on 21st November 2020, preferred an appeal against the said decision vide a Memorandum of Appeal dated 8th December 2020. The same is predicated upon the following grounds;

a) That the learned Senior Principal Magistrate erred in finding that the Chief Magistrate's court presided over by a Chief Magistrate has jurisdiction to adjudicate over **Machakos Chief Magistrates Court Environment and Land Case No. 21 of 2019 Nelson Nzioki Kimeu and Abigail Ndanu Kyalo (Suing as the administrators of the estate of Charles Kyalo Kimeu (deceased) v. Geoffrey Macharia Muraya & 2 Others.**

b) The learned Senior Principal Magistrate erred in law and in fact in ignoring the expert valuation report showing the land the subject matter of the suit aforesaid is valued at Ksh. 30,400,000/=.

c) That the learned Senior Principal Magistrate erred in law and in fact in failing to strike out the Plaintiff's suit with costs for lack of jurisdiction.

d) Having previously found that the court has no jurisdiction and made the orders to transfer the suit aforesaid to the Environment and Land Court Machakos, the learned Senior Principal Magistrate erred in law and in fact in failing to allow the 1st Defendant/Applicant's Application seeking to strike out the Plaintiff's suit for want of jurisdiction.

e) The learned Senior Principal Magistrate erred in attempting to confer jurisdiction upon the Chief Magistrate's court by transferring the matter to the court while she lacked the jurisdiction to do so.

8. The Appellant sought the following orders;

a) This Appeal herein be allowed with costs to the Appellants to be borne by the Respondents.

b) The Ruling of the Honourable C. A. Ocharo (Senior Principal Magistrate) delivered on 21st November, 2020 in Chief Magistrate's Court Environment and Land Case No. 21 of 2019 be set aside and appropriate orders be issued.

c) This honourable court makes an order that the 1st Defendant/Appellant's Notice of Motion dated 4th November, 2019 is allowed with costs and the Plaintiff's suit in the lower court is struck out with costs.

d) This honourable court grants any other or better order as will ensure the ends of justice are met.

9. This court directed that the Appeal be canvassed by way of written submissions and both the Appellant and the Respondents have filed their respective submissions.

THE APPELLANT'S SUBMISSIONS

10. The Appellant's counsel submitted that upon valuation of the subject matter, the same was valued at Kshs. 30,400,000/=. and that as this valuation differed from the Plaintiff's valuation, the court ordered parties to file a joint valuation report but the Respondent, filed a report of

Kshs. 18,000,000/- without involving the Appellant hence it was wrong for the trial court to rely on the said report in its decision.

11. Counsel argued that the Chief Magistrate's jurisdiction is capped at Ksh.20,000,000/= in accordance with the provisions of Section 7 (1) of the Magistrates Court Act.

12. Counsel also contended that the Senior Principal Magistrate had no jurisdiction to issue orders transferring the suit to the Chief Magistrate's Court after making a finding that she had no jurisdiction to handle the same. They cited the case of *Phoenix of E.A Assurance Co. Ltd vs S.M Thiga t/a Newspaper Service (2019) eKLR* for the definition of jurisdiction. They urged that having found that she lacked jurisdiction, the Senior Principal Magistrate should have downed her tools which meant striking out the suit. They relied on the celebrated case of *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd (1989) eKLR* wherein it was held that where a court has no jurisdiction, it has no power to make one more step, and must down its tools. They concluded by praying that the court grants their prayers as set out in their memorandum of Appeal.

THE RESPONDENTS' SUBMISSIONS

13. Counsel for the Respondents submitted that the issue in this appeal is whether the Chief Magistrates court had jurisdiction to try Machakos ELC case No. 21 of 2019. Counsel submitted further that Section 7 of the Magistrates Courts Act provided that the jurisdiction of the Chief Magistrates Court was capped at Ksh.20,000,000/=.

14. Counsel further submitted that the parties had by consent agreed to have independent valuation reports as per court proceedings of 17th April, 2019, upon which they filed their respective reports, but the reports had a significant difference of Kshs. 12,400,000/=, which prompted the court to direct that the subject matter be valued by the government valuer who will be an independent valuer. Counsel observed that the government valuer valued the suit property at Ksh.18,000,000/=, which the trial court relied on to arrive at its decision.

15. Counsel stated that the learned magistrate acted prudently by holding that she had no jurisdiction and consequently transferred the file to the Chief Magistrate's court instead of having the file without directions. Counsel urged that directing that the file be taken to the chief magistrate for directions was both an administrative and legal issue. Counsel pointed out that the suit had been filed in the chief magistrates Courts and therefore the chief magistrate had jurisdiction to handle the case. Counsel buttressed their view by drawing the attention of the court to page 66 of the record of Appeal, where the Appellant stated that he bought the suit property for Ksh. 4,000,000/= in the year 2013, that hence it would be unreasonable to have the value escalate to over Ksh. 30,000,000/= within six years. They finalized by praying that the Appeal be dismissed with costs since the prayers sought are vague.

ANALYSIS AND DETERMINATION

16. I have considered the Appeal, the record of appeal, all the material on record, the parties' submissions and authorities relied upon. In my considered view, the issues that arise for determination are;

- a) Whether the Magistrates court had pecuniary jurisdiction to determine the suit, and
- b) Whether the Senior Principal Magistrate had jurisdiction to refer the matter to the Chief Magistrate for directions.

17. The pecuniary jurisdiction of the Magistrates Court is capped at Ksh. 20,000,000/=. This is expressly provided for in section 7 of the Magistrates' Courts Act No. 26 of 2015 as follows;

7. Civil jurisdiction of a magistrate's court

A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed-

- (a) twenty million shillings, where the court is presided over by a chief magistrate;**
- (b) fifteen million shillings, where the court is presided over by a senior principal magistrate;**
- (c) ten million shillings, where the court is presided over by a principal magistrate;**
- (d) seven million shillings, where the court is presided over by a senior resident magistrate; or**
- (e) five million shillings, where the court is presided over by a resident magistrate.**

18. The Black's Law Dictionary, 11th Edition, defines Jurisdiction as a court's power to decide a case or issue a decree.

19. In the case of *Phoenix of E. A. Assurance Company Limited v S.M. Thiga T/A Newspaper Service (2019) eKLR*, at Paragraph 2, the Court of Appeal sated as follows;

"In common English parlance, Jurisdiction denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without

jurisdiction, then the result will be a nullity *ab initio* and any determination made by such court will be amenable to being set aside *ex debito justitiae*.”

20. Once a court finds that it has no jurisdiction, it must down its tools and should not take any further step. In the case of *Owners of the Motor Vessel ‘Lillian S’ v Caltex Oil (Kenya) Ltd [1989] eKLR*, the Court of Appeal had the following to say about jurisdiction;

“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.”

21. The issue as to whether the Magistrates Court had jurisdiction to determine the suit in Machakos CMC ELC 21 of 2019, must be determined by examining whether the material placed before the trial court was sufficient to warrant the decision arrived at. This court, being an appellate court, has the duty to reevaluate the evidence placed before the trial court and establish whether the conclusions made on the evidence before the court below and the findings arrived at by that court were justified.

22. The question as to whether the Magistrate’s Court had jurisdiction to hear and determine the matter, can only be answered after determining what the value of the suit property was. I note that in the Notice of Motion dated 4th November 2019, the Appellant sought to have the Respondents’ suit struck out on grounds that the Magistrates court having pecuniary jurisdiction capped at Kshs. 20,000,000/=, lacked jurisdiction to determine the suit, as the value of the subject matter was over Kshs. 30,000,000/=. I must point out that both the said application and the pleadings did not disclose the value of the subject matter, as there was no evidence to show the value of the suit property, and even the Appellant’s contention that the suit property had a value of over Kshs. 30,000,000/= had no basis.

23. Faced with this unsupported allegation by the 1st Defendant that the suit property had the value of over Kshs. 30,000,000/=, on 17th April 2019, upon agreement of the parties that independent valuation reports be filed, the court ordered the parties to file independent valuation reports within 30 days. It appears that what the parties meant by independent valuation reports, were valuation reports to be filed separately by each party, because on the next mention date of 3rd June 2019, counsel for the 1st Defendant informed court that he had filed his report while the plaintiffs’ counsel sought for more time to file his clients’ valuation report, which he eventually filed. The 1st Defendant’s valuation report showed that the suit property was valued at Kshs. 30,400,000/=, while the plaintiffs’ valuation report indicated the value as Kshs. 18,000,000/=. The difference of Kshs. 12,400,000/= seen in the two rival valuation reports prompted the court to order that valuation be done by a Government valuer. The Appellant complained that the lower court ordered for a joint report but that this third valuation report did not involve him. In my view, it is misleading for the Appellant to argue that the court ordered for the parties to file a joint report. The record clearly shows at page 107 of the record of appeal (proceedings of 30th July 2019), that the court ordered that valuation be done by a Government valuer. There is no mention of a joint report as purported by the Appellant. At this point, it is important to reproduce the lower court’s order made on 30th July 2019, which is as follows;

I have noted the contents of the two Valuation Reports and the conflicting value of the property.

I hereby direct that the Valuation be done by a government Valuer and a report be availed in court.

24. The record at page 133 shows a copy of the Appellant’s valuation report dated 10th May 2019 by Verity Management Limited. The said valuers attached an open market value of Kshs. 30,400,000/= to the suit property, a mortgage value of Kshs. 25,800,000/= and a forced sale value of Kshs. 22,800,000/=. On the other hand, Page 158 of the record of Appeal shows the Respondents’ valuation report, prepared by ProLand Realtors Limited, who attached a market value of Kshs. 18,000,000/= to the suit property and forced sale value of Kshs. 15,000,000/=.

25. Surprisingly, the report by the Government valuer does not form part of the record of appeal as filed by the Appellants. It cannot be ascertained if this was by default or by design. In her ruling of 21st November, 2020, the learned Senior Principal Magistrate referred to the report by the Government valuer as being annexed and marked “NN1” in the Respondent’s Replying Affidavit. The said valuation is said to have placed a value of Kshs. Ksh.18,000,000/- on the suit property.

26. I have perused the lower court file and I note that on record, there is a valuation report from the Ministry of Land and Physical Planning, Machakos, which was prepared by one B. Gachau, Valuation Officer, Machakos County. The same was filed on 18th December 2019. The said valuation report was said to have been done in compliance of the court’s order dated 10th September 2019. According to the Valuation officer Machakos County, the value of the suit property as at 13th December 2019 was Kshs. 18,000,000/=. The trial magistrate placing reliance on the Government valuer’s valuation report, made a finding that, being a Senior Principal Magistrate whose pecuniary jurisdiction was capped at Kshs. 15,000,000/=-, she had no jurisdiction to hear and determine the matter, but that the Magistrates court and more specifically the Chief Magistrate had jurisdiction to determine the matter and subsequently referred the matter to the Chief Magistrate for directions.

27. This being the case, and bearing in mind that the pecuniary jurisdiction of a Chief Magistrate is capped at Kshs. 20,000,000/=-, I am in agreement with the trial court’s finding that the Magistrates court has jurisdiction to hear and determine the suit, Machakos CMC ELC No. 21 of 2019, since the value of the suit property is below Kshs. 20,000,000/=-.

28. The Appellant has argued that the Senior Principal Magistrate erred in law and in fact by transferring the suit to the Chief Magistrate’s court instead of striking it out upon finding that she had no jurisdiction. It must be borne in mind that Machakos CMC case No. 21 of 2019 was filed in the Magistrates Court. This court takes judicial notice of the fact that the magistrates court is presided over by the Chief magistrate, the Senior Principal Magistrate, the Principal Magistrate, the Senior Resident Magistrate and the Resident Magistrate, whose pecuniary jurisdiction starts from Kshs. 5,000,000/= and goes up to Kshs. 20,000,000/= depending on the designation of the magistrate.

Besides, once a matter is filed in the Magistrates court, for administrative purposes, the same is placed before the duty court which then allocates it to any magistrate with jurisdiction. If the pecuniary value of the subject matter cannot be ascertained from the pleadings, the suit may be allocated to any magistrate. In this case, this matter was allocated to the Senior Principal Magistrate with pecuniary jurisdiction of 15 Million. The Senior Principal Magistrate having noted that the value of the suit land being Kshs. 18,000,000/= was within the pecuniary jurisdiction of the Magistrates Court, but as the senior principal magistrate she had no jurisdiction, she referred the matter to the Chief Magistrate for directions. This finding, in my view is justified as the valuation of the suit property by the Government valuer was Kshs. 18,000,000/=. This is so because the order to have the property valued by the Government valuer, was neither appealed against nor set aside. The Appellant has not disputed that the valuation report relied upon by the trial court was done by a Government valuer. Besides, there is nothing on record to support the Appellant's contention that the Government valuer should have involved the Appellant in preparation of the valuation report. Even the nature of the demanded involvement is not disclosed by the Appellant.

29. The Appellant's argument that the trial court lacked jurisdiction to transfer the case to the Chief Magistrate, in my considered view, merely amounts to splitting hairs. I say so because the suit was already filed in the Magistrates Court and therefore the issue of transfer did not arise. The Senior Principal Magistrate did not transfer the suit to the Chief Magistrate. What she did was to refer the matter before the Chief Magistrate for direction in view of the fact that the value of the suit land was Kshs. 18,000,000/=-, which matter was well within the Chief Magistrate's pecuniary jurisdiction, and which matter had found its way on her desk by virtue of administrative procedures of the lower court. Indeed, this was the finding of the Senior Principal Magistrate:

Having considered the issue before me and the submissions by both parties, this court is presided over by a Senior Principal Magistrate whose pecuniary Jurisdiction is capped at Kshs. 15,000,000/- as provided in section 7 (1) of the Magistrates Court Act so that I lack jurisdiction to entertain this matter. However, the Magistrates' Court has jurisdiction should this court rely on the neutral report from the government valuer dated the 13th December 2019 which places the value of the suit property at Kshs. 18,000,000/=-.

In the interest of justice, this court proceeds to set aside the orders issued on 27th February 2019 as they are a nullity having been issued without jurisdiction. The matter is referred to the Chief Magistrate for directions.

30. In my considered view, referring the matter to the Chief Magistrate for directions, was a proper and justified decision to make, as the court had rightly found that the value of the suit property, though not within her jurisdiction, was within the pecuniary jurisdiction of the Chief Magistrate. In any event, the question before the trial court was whether the Magistrate's Court had jurisdiction to determine the suit, and the court rightly rendered itself on the issue and went ahead to place the file before the right magistrate.

31. Article 159 (2) (d) of the Constitution of Kenya 2010 provides as follows;

In exercising judicial authority, the courts and tribunals shall be guided by the following principles-

- a)
- b)
- c)
- d) **Justice shall be administered without undue regard to procedural technicalities.**

32. Sections 1A and 1B of the Civil Procedure Act provides as follows;

1A (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.

(2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).

(3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the court.

1B (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims-

- (a) **the just determination of the proceedings;**
- (b) **the efficient disposal of the business of the Court;**
- (c) **the efficient use of the available judicial and administrative resources;**
- (d) **the timely disposal of the proceedings, and all other proceedings in the Court at a cost affordable by the respective parties; and**

(e) the use of suitable technology.”

33. In my view, this court is enjoined by both Article 159 of the Constitution and sections 1A and 1B of the Constitution to uphold substantive justice without undue consideration to technicalities. I am clear in my mind that the issue of jurisdiction is not a matter of technicality but goes to the root of the power of the court to determine a matter. However, where different designations of magistrates have different pecuniary jurisdictions as spelt out in Section 7 of the Magistrates Courts Act, it becomes a matter of undue technicality to require one magistrate to strike out a suit that another magistrate has jurisdiction, when the matter was placed before the former for no fault at all of the Plaintiff. In my considered view, it would go against the spirit of Article 159 of the Constitution as well as Sections 1A and 1B of the Civil Procedure Rules, for the Senior Principal Magistrate to strike out a suit which the Chief Magistrate has jurisdiction to determine, merely because the matter had been placed before the Senior Principal Magistrate, instead of the Chief Magistrate.

34. In the end, I find and hold that there is no justification to interfere with the findings of the trial magistrate. In the premises, I do not find any merit in this appeal and the same is dismissed with costs to the Respondents.

35. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 9TH DAY OF MARCH 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of:

Mr. Mwinzi for the Appellant

No appearance for the Respondent

Josephine Misigo – Court Assistant