



**IN THE HIGH COURT AT HOMA BAY**

**CIVIL APPEAL NO. 21 OF 2013**

**BETWEEN**

**MARY ADHIAMBO OTIENO ..... APPELLANT**

**AND**

**RAYMOND OLOO NDONG ..... RESPONDENT**

*(Being an appeal from the Ruling and Order of Hon. S. M. Ongeru, PM dated 7<sup>th</sup> November 2012 in Chief Magistrates Court at Homa Bay in Civil Case No. 77 of 2012)*

**RULING**

1. This appeal arises from a dispute concerning Homa Bay Commercial Plot No. 176. The respondent filed a suit against, amongst others, the appellant alleging that on diverse dates, the appellant purported to have bought the plot from Kenya Commercial Bank as chargee. She subsequently occupied it and leased it to Catherine Obura t/a Rose Restaurant. He therefore prayed for specific performance to compel the appellant to deliver vacant possession to the respondent.

2. The appellant stated in her defence that her deceased husband bought the property at auction in the year 2000. The Bank in its defence stated that the property was used as collateral but due to default by the debtor it sold the property at an auction for value.

3. This appeal is precipitated by two applications made by the appellant in the subordinate that were argued and dismissed. In summary the learned magistrate held that the court had jurisdiction to entertain the suit and that it was not time barred by the law of limitation.

4. From the brief facts I have outlined, the cause of action is one concerning the use and occupation of land within the meaning of **Article 162(2)(b)** of the Constitution which establishes a court of the status of the High Court to deal with, “*the environment and the use and occupation of, and title to, land.*” **Article 165(6)** of the Constitution states that the High Court shall not have jurisdiction in respect of matters, “*falling within the jurisdiction of the courts contemplated in Article 162(2).*”

5. The case and subsequent appeal deal with the ownership and possession Homa Bay Commercial Plot No. 176 hence this Court lacks jurisdiction to deal with matter. Under **section 13(1)** of the ***Environment and Land Court Act, 2011***, the Environment and Land Court shall have appellate jurisdiction. This appeal rightly belongs to that court.

6. I therefore decline jurisdiction and order that this matter be transferred for hearing and disposal to the Environment and Land Court in Kisii.

**DATED and DELIVERED at HOMA BAY this 30<sup>th</sup> day of October 2014.**

**D.S. MAJANJA**

**JUDGE**

Mr Osoro instructed by Ochanda Onguru & Company Advocates for the appellant.

Mr Nyauke instructed by Nyauke & Company Advocates for the respondent.