



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL APPEAL NO. 523 OF 2003**

**JOHN KAMAU WANYOIKE.....APPELLANT**

**VERSUS**

**DANIEL KINUTHIA NJOROGE.....1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY COUNCIL.....2<sup>ND</sup> RESPONDENT**

**FLORENCE NJOKI KAMANDE(Sued as the legal representative  
of)**

**FRANCIS KAMADE GITAU'S ESTATE.....3<sup>RD</sup> RESPONDENT**

**R U L I N G**

This appeal was heard on 25<sup>th</sup> September 2014. It arises from the Rulings of Hon. P. Wekesa, Resident Magistrate Milimani Nairobi delivered on 1<sup>st</sup> August 2003 and 8<sup>th</sup> October 2003 in RMCC 5677 of 2003.

I heard the parties' advocates and reserved judgment for today 8<sup>th</sup> December 2014. However, upon careful perusal of the dispute before the Subordinate Court as filed, giving rise to this appeal, I discovered that the matter squarely falls within the jurisdiction of the Environment and Land Court. The main dispute relates to ownership and occupation of plot number MVN 4-22 Mathare Area 4.

The appellant claims title to it accusing the City Council of Nairobi of re-allocating it to the 1<sup>st</sup> respondent fraudulently and thereby denying him title to the same being the first rightful allottee thereof.

Although this court has unlimited original jurisdiction to hear and determine all disputes of a civil nature; and jurisdiction to hear appeals from decisions of the Subordinate Courts or tribunals, and had such unlimited jurisdiction in land matters in the old constitutional dispensation, the position drastically changed with the promulgation of the Constitution of Kenya, 2010 on 27<sup>th</sup> August 2010.

Article 162 (2) (b) of the said Constitution contemplates the establishment of a superior court with the same status as the High Court to hear and determine all disputes relating to the environment and the use and occupation of, and title to land.

Clause 3 enacts that Parliament shall determine the jurisdiction and functions of the said court; and it was for this reason that the Environment and Land Court Act, 2011 was enacted embedding therein the

Environment and Land Court and conferring jurisdiction on the said court.

Besides the Environment and Land Court Act, 2011, Parliament also enacted other laws to operationalize Chapter 5 – the land chapter namely the Land Act, 2011 and the Land Registration Acts, 2011 which Acts also confer jurisdiction to the Environment and Land Court to hear and determine disputes of the nature as described in Article 162 (2) (b) of the Constitution.

In addition, the Constitution of Kenya, 2010, Article 165 (5) (b) thereof expressly ousts the jurisdiction of the High Court from hearing and determining disputes or matters reserved for the exclusive jurisdiction of the courts contemplated in Article 162 (2) (b) of the Constitution.

Although the transitional and consequential provisions of the Constitution, Part 5 thereof on administration of justice, Section 22 provides that all judicial proceedings pending before any court shall continue to be heard and shall be determined by the same court or a corresponding court established under the Constitution or as directed by the Chief Justice or the Registrar of the High Court, my understanding of the above transitional provision is that such continuation of proceedings before the same court was meant to be, pending the establishment and operationalization of the relevant court as established under Article 162 (2) (b) of the Constitution. Further, that upon operationalization of the said court, the provisions of the transitional and consequential provisions would be spent and Article 165 (5) of the Constitution would become operational.

In this case, it is trite that the dispute herein was first initiated in the lower court and an appeal lodged to the High Court. There was jurisdiction to hear and determine the dispute for as long as Article 162 (2) of the Constitution was not fully operational. The situation is different. I find this court lacking jurisdiction to determine this appeal on merit, the Environment and Land Court having been established and fully operationalized by the appointment of judges to preside over the court.

I appreciate that this ruling is coming a bit too late in the day after hearing the parties. That notwithstanding, acknowledging that jurisdiction is everything, and cannot be conferred by parties to a dispute – noting that none of the parties to this appeal raised it before hearing them, it is the duty of this court to examine the dispute and determine whether it has the necessary jurisdiction to determine it. A determination of this appeal on merit also determines rights of parties. To determine the appeal without jurisdiction is to do an act that is a nullity which will no doubt prejudice the parties' rights.

It is for those reasons that I have, on my own motion recalled the proceedings taken on 25<sup>th</sup> September 2014 and for lack of jurisdiction, I proceed to expunge the said proceedings from the record. The net effect is that the said proceedings are nullified.

I however direct that the appeal herein be placed before the Presiding Judge of the Environment and Land Court for further directions as to its hearing and determination.

**Dated, signed and delivered at Nairobi this 8<sup>th</sup> day of December, 2014.**

**R.E. ABURILI**

**JUDGE**