



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. MISCELLANEOUS CASE NO. 14 OF 2013

KYALO MUNYAO.....1ST PLAINTIFF/APPLICANT
MUSYOKA USUSU.....2ND PLAINTIFF/APPLICANT
DANIEL MUTINDA.....3RD PLAINTIFF/APPLICANT
PATRICK NGOVI.....4TH PLAINTIFF/APPLICANT
SIMON KATHUMA.....5TH PLAINTIFF /APPLICANT
KAVOI MASAI.....6TH PLAINTIFF/APPLICANT
STEPHEN MULWA.....7TH PLAINTIFF/APPLICANT

VERSUS

BONIFACE MAKAU MUIA.....1ST DEFENDANT/RESPONDENT
JOHN MUKAMI.....2ND DEFENDANT/RESPONDENT
PATRICK MUASA KATIKU.....3RD DEFENDANT/RESPONDENT
NGUNYA MUTETI.....4TH DEFENDANT/RESPONDENT

RULING

Before me for determination is the Notice of Motion dated 10th April 2013 in which the Plaintiffs/Applicants are seeking for orders that this court transfers Machakos **CMCC No 1104 of 2011 Kyalo Munyao & six others -vs- Boniface Makau Muia & three others** from the Chief Magistrates Court at Machakos Law Courts to the nearest Environment and Land Court for hearing and disposal of the same. They are also seeking that costs of this Application be in the cause.

The Application is based on the grounds appearing on the face of the Application and the supporting

affidavit of Kyalo Munyao sworn on 10th April 2013 wherein he stated that they filed a *suit being CMCC No. 1104 of 2011 Kyalo Munyao & six others -vs- Boniface Makau Muia & three others* on 5th December 2011 which suit was instituted before the Environment and Land Act 2011 came into operation. He further stated that by then the Chief Magistrates Court had jurisdiction to hear and determine the said suit but now the proper court to hear and determine this suit is the Environmental and Land Court. He further stated that the Hon. Chief Justice issued Practice Directions on 9th February 2012 and thereafter on 20th September 2012 to the effect that those proceedings which were pending before the subordinate Court which had not been concluded shall be moved to the Environment and Land Court therefore this suit is within the jurisdiction of the Environmental and Land Court. He further stated that the defendants will not suffer any prejudice should the suit be transferred as prayed.

This Application is contested. Boniface Makau Muia, the 1st Defendant, filed a replying affidavit on behalf of the Defendants sworn on 10th May 2013 stating that this Application is based on a misconception of the practice directions issued by the Chief Justice vide **Gazette Notice No. 16268 of 9th November 2012** and highlighted direction number 7 to the effect that Magistrates Courts have jurisdiction to hear cases like this one and therefore it is unnecessary and undesirable to transfer this case as sought. He therefore opposed the transfer of this suit and prayed that this Application be dismissed with costs.

Both the Plaintiffs and the Defendants filed their written submissions which have been read and taken into consideration in this ruling.

The issue for determination is whether the Chief Magistrates Court has jurisdiction to hear and determine the suit bearing in mind that the dispute in that suit relates to land. The question of a Court's jurisdiction or otherwise is the beginning and the end of any matter as stated by Nyarangi JA (as he then was) in **The Owners of Motor Vessel "Lillian S" versus Caltex Oil Kenya Limited (1989) KLR** as follows:

"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 its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction"

Article 162(2) of the Constitution provides that Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to the environment and use and occupation of, and title to land. **Article 162(3)** provides that Parliament shall determine the jurisdiction and functions of the Courts contemplated in **Article 162(2)**. It was on the basis of this provision that Parliament enacted the **Environment and Land Court Act, No. 19 of 2011**, which came into effect on 30th August 2011. The object of the Act is stated as follows:

"An Act of Parliament to give effect to Article 162(2)(b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to land, and to make provision for its jurisdiction, functions and powers, and for connected purposes"

Section 13(1) of the **Environment and Land Act** provides that the Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with **Article 162(2) (b)** of the **Constitution**. **Section 13(4)** provides that in addition the Court shall exercise supervisory jurisdiction over the decisions of subordinate courts or local tribunals in respect to matters falling within the jurisdiction of the Court. This provision clearly stipulates that the intention of this Act was not to oust the jurisdiction of subordinate courts to hear and determine land disputes. This position was further enunciated by Lenaola, J. in the case of **Edward Mwaniki Gaturu & Another versus Attorney General & 3 others (2013) eKLR** where he held, inter alia, that Magistrates' Courts had jurisdiction to determine matters falling within the jurisdiction of the Environment and Land Court and their decisions would be subject to appeals preferred to the Environment and Land Court. In light of this finding, I find that the Chief Magistrates Court does have the jurisdiction to hear and determine **CMCC No. 1104 of**

2011 Kyalo Munyao & six others -vs- Boniface Makau Muia & three others. Accordingly, I hereby dismiss this Application. No order as to costs.

It is so ordered.

SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2013

MARY M. GITUMBI

JUDGE