



Ndindiri v Irimu & 3 others (Environment and Land Case Civil Suit E23 of 2022) [2022] KEELC 2790 (KLR) (30 June 2022) (Ruling)

Neutral citation: [2022] KEELC 2790 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E23 OF 2022**

EK WABWOTO, J

JUNE 30, 2022

BETWEEN

MOINCA NYAKIRINGA NDINDIRI PLAINTIFF

AND

DR. MUNENE IRIMU 1ST DEFENDANT

PRISCILLA CHEGE 2ND DEFENDANT

DAVID MBIYU MUHIA 3RD DEFENDANT

EDWARD KIMANI NGANGA 4TH DEFENDANT

RULING

1. This ruling is in respect to the preliminary objection dated 14th February 2022 by the Defendant. The preliminary objection was premised on the sole ground that this court does not have jurisdiction to preside over and determine the suit for the reasons that it offends the provisions of the [Physical and Land Use Planning Act](#) No. 13 of 2019.
2. Counsel agreed to canvass the preliminary objection vide written submissions. Counsel for the Defendant submitted on the merits of the preliminary objection and relied on the written submissions dated 23rd February 2022. It was submitted that the suit offends section 72 and 73 of the [Physical Planning and Land Use Act](#) which provides for the procedure for dispute resolution at the instance where a party wishes to challenge an Enforcement Notice.
3. The Plaintiff opposed the preliminary objection and stated that the court has jurisdiction to hear and determine the petition herein. Counsel submitted that the preliminary objection does not meet the threshold of *Mukisa Biscuit Manufactures Ltd vs West End Distributors Ltd* (1969) E.A 696. It was contended that the Plaintiff's suit does not relate in any way to the challenge of the Enforcement Notice but rather seeks for compensation of loss arising from the Defendants actions of denying entry of the



Plaintiff's contractor and agents to the site at Garden Estate for construction of Town Houses. Counsel therefore urged the court to dismiss the preliminary objection with costs.

4. I have considered the Preliminary objection together with the submissions filed by the parties. I have also considered the pleadings on record. This preliminary objection is based on the ground that this court does not have jurisdiction to hear and determine this suit. The principles to be considered when dealing with preliminary objections are now settled as per the *Mukisa Biscuits Manufacturing Ltd Vs West End Distributors Ltd (1969) E.A 699* which stated that preliminary objections must raise issues purely on a point of law.
5. Counsel for the Defendants has argued that the suit offends the provisions of the Physical Planning and Land Use Act. When an objection touches on jurisdiction of a court, the court must first deal with that issue to determine whether it is clothed with the necessary powers to proceed or down the tools to allow another court or body to handle the matter.
6. This court derives its jurisdiction from the provisions of Article 162(2) (b) of *the Constitution* and Section 13 of the *Environment and Land Court Act* (ELC Act). Section 13 of the *Environment and Land Court Act* (ELC Act) stipulates as follows: -
 - “(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 law applicable in Kenya 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—
 - (a) relating to environmental planning and protection, 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.”
7. It should be noted that the jurisdiction of this court extends to the hearing of claims of violation of Constitutional rights and fundamental freedoms relating to the environment and land.
8. The Plaintiff's claim emanates from the stopping of her project by the Defendants who had unlawfully and without any justification denied her contractors and agents entry to the site as a result of which she incurred loss upon which she has sought for compensation for damages incurred. The Defendants cannot be heard to say that this court does not have jurisdiction to hear this suit on the basis that it is a dispute that should be referred to the County Physical and Land Use Planning Liaison committee. Clearly the liaison committee does not have jurisdiction to award damages and hear this suit. From the perusal of the Plaintiff's pleadings and contrary to the Defendants assertion, there is no indication that the Plaintiff has sought to challenge the Enforcement Notice. This is a total misapprehension of the law by the Defendants. Section 13 of the *Environment and Land Court Act* is very clear on the mandate



of the court as earlier alluded to and the Plaintiff's suit is properly before this Court for hearing and determination.

9. The issue of jurisdiction of the Environment and land Court has been adjudicated in many cases in the Court of Appeal including the Supreme Court. Having said that I find that the preliminary objection on the issue of jurisdiction of this court to hear and determine the plaintiffs' claim is misplaced and has no merit. The same is dismissed with costs to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE 2022.

E. K. WABWOTO

JUDGE

In the Virtual Presence of:-

Mr. Majimbo for the Plaintiff.

Mr. Karegi h/b for Mr. Kagunyi for the Defendants

Court Assistant: Caroline Nafuna.

E. K. WABWOTO

JUDGE

