



**Ngeny v Chesimet & 2 others (Environment & Land Case
11 of 2022) [2022] KEELC 3967 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3967 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 11 OF 2022
MN MWANYALE, J
JULY 27, 2022
(FORMERLY ELDORET ELC CASE NO E 025 OF 2021)**

BETWEEN

ABIMAEI JEPKEMBOI NGENY APPLICANT

AND

ROMANA CHERUBET CHESIMET 1ST RESPONDENT

HILLARY KIPKEMOI CHESIMET 2ND RESPONDENT

GEOFFREY KIPCHIRCHIR CHESIMET 3RD RESPONDENT

RULING

1. The application before me is the one dated March 8, 2022 filed by the defendant. The application is brought *inter alia* under the provisions of section 1A, 1B, 3A of the [Civil Procedure Act](#), order 2 rule 15, order 51 rule 1 of the [Civil Procedure Rules 2010](#), section 30 (1) of the [Land Adjudication Act](#), and section 8 (1) (2) of the [Land Consolidation Act](#). The applicant seeks for orders that: -
 1. This suit be struck out for being an abuse of process of court.
 2. Costs of this application and the suit be borne by the Plaintiff.
2. The defendant/applicant principally cites the following grounds: -
 - i. That the suit is *res-judicata* as the facts and issues raised are similar to the facts and issues raised in Eldoret Misc application no E017 of 2021 In the matter of the estate of Richard Kipmalel Chesimet.
 - ii. That the court lacks jurisdiction to adjudicate over the disputes between, parties the issues having been previously and finally determined by a court of competent jurisdiction on



September 16, 2021 by Hon Justice O A Sewe in Eldoret Misc application no E017 of 2021
In the matter of the estate of Richard Kipmalel Chesimet

- iii. That the court lacks jurisdiction since the issues herein have lacks been previously.
 - iv. That the court lacks jurisdiction to adjudicate over the issues raised in prayer no 5 and 7 of the Originating Summons whose jurisdiction is within the ambit of *Children's Act*.
 - v. That the court jurisdiction to adjudicate over disputes since the issues raised herein are currently being adjudicated in Eldoret Misc application no E017 of 2021 In the matter of the estate of Richard Kipmalel Chesimet and another vs Romana Chesimet and others.
 - vi. That the plaintiff/respondent lacks the locus standi to prosecute any claim over properties registered in the name Richard Kipmalel Chesimet.
3. The application is supported by affidavit of Geoffrey Kipchirchir Chesimet who reiterates the grounds cited herein above.
 4. Pursuant to the directions of the court issued on June 6,2022, the court directed parties to canvass the application by way of written submission. On July 5, 2022, the court noted that the instant application is unopposed and deemed it so.
 5. In support of their application dated March 8, 2022, the defendants/applicants filed written submissions dated July 5, 2022. They condensed the issues in the application into four (4) namely;
 - i. Whether the plaintiff has *locus standi*
 - ii. Whether the matter is *res judicata*
 - iii. Whether the court has jurisdiction
 - iv. Abuse of the court process.
 6. The applicants extensively submitted on each issue which submissions I have taken into consideration.

Analysis and determination

7. I have read and analysed the Notice of Motion application dated March 8, 2022, Applicants written submissions together with authorities filed. The main issue for determination is whether the suit ought to be struck out for being an abuse of the court process.
8. Before I delve into the interrogation of the merits of the application, I find it imperative and prudent to address a jurisdictional issue that has arisen while I was perusing the instant application, its annexures vis a vis the Originating Summons the Applicant seeks to strike out. All these forms part of the record of the court.
9. It is trite law that jurisdiction is a fundamental issue that ought to be determined first whenever raised either by court *suo moto* or on application by a party. This is so because in the event the court finds it has no jurisdiction it has to down tools. In the case of *Owners of the Motor Vessel "Lilian S" vs Caltex Oil (Kenya) Ltd* (1989) eKLR, Nyarangi J A (as he was then) expressed himself thus: -

“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 is without jurisdiction.....”



By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means.....

Where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

10. Where does jurisdiction emanate from? Jurisdiction flows from either the Constitution or legislation or both. The Supreme Court of Kenya in the case of *Samuel Macharia vs KCB and 2 others* (2012) eKLR stated that;

“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus a court of Law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

11. This court draws its jurisdiction from the Constitution under article 162 (2) (b) which provides thus: -

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-

- b) The environment and the use and occupation of, and title to, land.”

12. In the discharge of its obligation placed by the Constitution as cited herein above, Parliament enacted the Environment and Land Court Act and set out in detail the jurisdiction of this court. Section 13 of the Act outlines this court’s jurisdiction as: -

“13) Jurisdiction of the court

- i. 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 application in Kenya relating to environment and land.
- ii. 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 interest in land; and
 - e. Any other dispute relating to environment and land.”



13. A plain reading of the above statutory framework on jurisdiction of the Environment and Land Court reveals that this court has jurisdiction to hear and determine disputes relating to the environment and use, occupation and title to land.
14. In light of the above exposition, I am of the view that the prayers sought in the Originating Summons that the applicant seeks to strike out relate to probate and administration as well as children welfare and maintenance. The applicant herein is seeking to have the Originating Summons struck out for being *res-judicata* and/or *sub-judice*, however this court has not jurisdiction to entertain any issues arising out of the Originating Summons.
15. Flowing from the foregoing, I hold that this court has no jurisdiction to hear and determine any issues emanating from the Originating Summons including the present application by the defendants/ applicants. The suit is therefore struck out with each party bearing its own costs.
16. It is so ordered.

DATED AT KAPSABET THIS 27TH DAY OF JULY 2022.

HON M N MWANYALE,

JUDGE.

In the presence of;

Ms Rop for defendant/applicant

No appearance for plaintiff/respondent duly served.

