



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELCA CASE NO. 62 OF 2017

ABUBAKAR HAMISI

ALI HAMISI

ASNAN KIGANGA

ABDALLA MANYOA.....APPELLANTS

VERSUS

AMANI GALOMBA SULEIMAN.....RESPONDENT

RULING

The application is dated 28th January 2021 and is brought under order 45 (1) a, b, (2) of the Civil Procedure Rules seeking the following orders:-

1. That the court's orders of 23rd October, 2021 be set aside and or be reviewed.
2. That this matter be referred back to the High Court for eventual determination.
3. Costs be provided.

It is based on the grounds that the land court has no jurisdiction on appeals from a succession matter. That there is no provision for dismissing a matter on a date fixed for mention. That there was no service of the mention date on the appellant or his advocates and that there is no affidavit of service on record. That there is an error apparent on the face of the record. That the order dated 23rd October, 2018 violated the appellants' rights to fair hearing and fair administrative action. The affidavit of the applicant.

The applicant submitted that this appeal was filed as Civil Appeal No. 2 of 2017 since it arose from succession proceedings in the Kadhi's Court in Hamisi Kadhi's court succession case No. 41 of 2016. That later the court suo motto transferred High Court Civil Appeal No 2 of 2017 to this court and the new number 62 of 2017 was given. That it is their belief that the transfer of the case to the land court was illegal as the land court does not have jurisdiction over succession matters. That therefore there was an error on the face of the record in transferring a succession matter to the Land and Environment Court for hearing and determination. That they have been trying to get the court file to enable them list the matter for hearing and that they were unable to locate the file for a long period. That on 20th January, 2021 his advocates found out that the matter came up for mention on 23rd October, 2018 and that the same was dismissed. That they had not been served with the notice to attend on 23rd October, 2018.

This court has considered the application and submissions therein. On perusal of the court records I find that this appeal was filed as Civil Appeal No. 2 of 2017 since it arose from succession proceedings in the Kadhi's Court in Hamisi Kadhi's court succession case No. 41 of 2016. That later the court suo motto transferred High Court Civil Appeal No 2 of 2017 to this court and the new number 62 of 2017 was given.

The jurisdiction of the **Environment and Land Court** is to hear and determine disputes relating to the environment and the use and occupation of and title to land as provided for under **Article 162(2) (b)** of the **Constitution of Kenya, 2010** and at **Section 13** of the **Environment and Land Court Act, 2011**. The said **Section 13** provides as follows:

13. Jurisdiction of the Court

(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.

In the classic case of Owners of the Motor Vessel Lilian S (1989) KLR 1 Hon. Justice Nyarangi, JA, opined 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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

From the foregoing, should this court find that it lacks requisite jurisdiction to hear and determine this suit, it will down its tools immediately without further prompting. In the case of Isaac Kinyua & 3 others v Hellen Kaigongi (2018) eKLR the court held that;

“From the foregoing, the ELC court exercises its supervisory role upon the magistrate’s court but only in matters stipulated under the aforementioned provisions of the Environment and Land Court Act. Succession matters do not fall under the ambit of the jurisdiction of the ELC court. If this court was to grant stay orders in respect of the succession cause, it would in essence amount to straying in a field where the court has no jurisdiction.”

Jurisdiction is everything and I find that this court has no jurisdiction in matters succession and must down its tools. From the provisions of the law and the authorities cited above I find that this court also does not have jurisdiction to hear appeals coming from a succession matter. This application is merited and I grant prayer 1 and 2 with no orders as to costs as the same is undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 24TH MARCH 2021.

N.A. MATHEKA

JUDGE