



**Hon. Attorney General on Behalf of the District Land Registrar, Kajiado v
Bounty Gardens Limited & 2 others (Environment and Land Miscellaneous
Application 2 of 2022) [2024] KEELC 1697 (KLR) (8 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1697 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 2 OF 2022
MN GICHERU, J
APRIL 8, 2024**

BETWEEN

**THE HON. ATTORNEY GENERAL ON BEHALF OF THE DISTRICT LAND
REGISTRAR, KAJIADO APPLICANT**

AND

BOUNTY GARDENS LIMITED 1ST RESPONDENT

**GICHUKI KARUGA T/A GACHUGI GICHUKI 7ADVOCATES 2ND
RESPONDENT**

NILE APPRAISERS (EA) LIMITED 3RD RESPONDENT

RULING

1. This ruling is on the notice of preliminary objection dated 22/9/2022. It is by the first respondent and it is premised on the following grounds.
 - i. That the suit is contrary to and offends Articles 162 (2) and 165 (5) (b) of the [Constitution of Kenya 2010](#) as read with Section 13 of the [Environment and Land Court Act](#) (Act no. 19 of 2011).
 - ii. That this court does not have jurisdiction to hear and determine the matter, seeing that the intended appeal relates to a matter determined in a civil and not an environment and land cause.
 - iii. That the whole matter as filed is vexatious and an abuse of solemn court process.
 - iv. That the whole matter is fatally defective for want of jurisdiction and should be struck out in limine.



2. Counsel for the 1st respondent filed written submissions dated 29/5/2023 and identified three (3) issues for determination as follows.
 - a. Whether Kajiado CMCC no. 97 of 2019 is a Civil or an Environment and Land matter.
 - b. Whether this court is clothed with the requisite jurisdiction to hear the applicant's application dated 2/6/2022.
 - c. Whether this court should grant the orders sought in the application dated 2/6/2022.

In urging that the Lower Court Suit was not a land case, the second respondent's counsel considered what the plaintiff sought, namely refund of ksh 8,319, 434, general damages, costs and interest and also what the court granted.

Secondly, it is the 1st respondent's case that the matter having been heard and concluded is now res judicata and unless an appeal is filed at the High Court, this court cannot now be called upon to rehear it.

Thirdly, counsel questions the manner in which the matter was commenced by way of Miscellaneous application.

For these and other reasons, it is urged that the case be struck out.

3. In opposing the preliminary objection, the applicant's counsel filed written submission dated 11/1/2024 in which it is responded as follows.

Firstly, the court that determined Civil Case no. 97 of 2019 did so in its capacity as an Environment and Land Court because even the plaintiff describes the case as an ELC Case and a party is bound by its pleadings.

Secondly, the subject matter was land parcel no. Ngong/Ngong/2318 and the dispute involved an alleged botched sale of the suit land.

Thirdly, Magistrates Courts have jurisdiction under Section 24(2) of the ELC Act to deal with ELC matters.

Finally, the lower court having been an ELC matter, this court has the requisite jurisdiction to entertain the Miscellaneous Application as presented.

4. I have carefully considered the preliminary objection in its entirety including the grounds, the written submissions and the law cited therein. I agree that the first determination that I should make is on jurisdiction because as correctly submitted by the 1st respondent's counsel, without jurisdiction the court must down its tools. See, Owners of Motor Vessel "SS Lillian" [1989] KLR) and Christopher Wafula Mutoro v Richard Lordia Lokere [2017] eKLR (Court of Appeal Eldoret).

Once the issue of jurisdiction is determined, the other issues become purely auxiliary. The easiest way to determine if the lower court case was Civil or ELC is to look at what was sought in the suit and see if it fits the ELC test which is to be found in Article 162(2) of the Constitution which provides as follows,

2. "Parliament shall establish court 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".

The jurisdiction of this court is very narrow and is confined to four areas.



5. Anything outside, the narrow confines of this jurisdiction is outside the jurisdiction of this court.
6. In my considered view, the plaint filed by the 1st respondent did not seek any environmental redress. It also did not seek the use of LR Ngong/Ngong/2318. It did not seek to occupy the land and it did not seek title to the land. It only sought a refund of the purchase price on discovery that the land did not belong to the purported vendor. This therefore means that the suit was Civil and not an environment and land case, even though it may have been described as falling on the latter category. It goes without saying that this court has no jurisdiction to entertain this case.
7. For that reason alone, this court has to down its tools and strike out the case for want of jurisdiction. Costs to the respondents.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 8TH DAY OF APRIL 2024.

M.N. GICHERU

JUDGE

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