



**Ntusha v Mbutu (Environment and Land Appeal E019 of 2022)
[2025] KEELC 4132 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4132 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E019 OF 2022**

MD MWANGI, J

MAY 22, 2025

BETWEEN

RODAH NTUTA KETUKEI NTUSHA APPELLANT

AND

GEOFFREY MWANGI MBUTU RESPONDENT

RULING

Background

1. Through a memorandum of appeal dated 30th November, 2023, the Appellant seeks to have the judgment in the Kajiado Chief Magistrate’s court in CMCELC E003 of 2020 delivered on 24th March, 2022 set aside. In the said judgment, the learned magistrate nullified the sale agreement dated 19th October, 2016 and directed that Appellant to refund Ksh. 2,400,000/= to the Respondent with interests at courts rates. The claim for refund of monies was founded on an agreement for purchase of land.
2. In the course of writing the judgement in this case, the question whether the court has the jurisdiction to entertain the appeal arose in my mind. I too note that my predecessor M.N Gicheru J, had on 22nd February, 2024 while considering the appellant’s Notice of Motion dated 21st February, 2024 expressed his reservations in the following words;

“...It is doubtful if this is an Environment and Land Court matter because of what was sought in CMCC E003 of 2020.

There was no claim to use, occupy and own any land.”



Determination

3. Having carefully read through the submissions by the parties, none of them has addressed the issue of the jurisdiction of this court. This issue ideally ought to have been considered and determined the moment the court expressed its sentiments.
4. I cannot over-emphasize the centrality of the issue of jurisdiction in any proceedings. The case of *Said Bin Seif –vs- Shariff Mohammed Shatry (1940) 19)*(1) KLR, epigrammatically captures the issue of jurisdiction. *Lucie –Smith J* in the said case stated that,

“If a court has no jurisdiction over the subject matter of the litigation, its judgment and orders however precisely certain and technically correct are mere nullities, and not only voidable; they are void and have no effect either as estoppel or otherwise, and may not only be set aside at any time by the court in which they are rendered, but shall be declared void by every court in which they may be presented. It is well established in law that jurisdiction cannot be conferred on a court by consent of parties and any waiver on their part cannot make up for lack or defect of jurisdiction. That being so, the point of jurisdiction may be properly taken in an appellate court and decided there even if it was not raised at the original trial.”
5. Having carefully considered the magnitude of the issue, I find it prudent to pause my writing of the judgment and allow the parties an opportunity to address me on the issue of jurisdiction and its effect on this appeal and the original suit, before making any final determination.
6. Accordingly, the judgement of this court is temporarily arrested pending the filing of further submissions by the parties on the issue of jurisdiction.
7. I will allow each of the parties fourteen (14) days to file and serve their written submissions on the issue of jurisdiction only, beginning with the Appellant who shall file and serve its further submissions on the issue of jurisdiction only in 14 days from the date of this ruling.
8. The Respondent shall have 14 days too after service of the Appellant’s submissions to file and serve his further submissions on the issue of jurisdiction only.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 22ND DAY OF MAY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Mageto for the appellant

N/A by the Respondent

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

