



Keiwua & 2 others v Nduti & another (Trading as by his Grace Enterprises) (Environment and Land Case Civil Suit 107 of 2022) [2023] KEELC 21339 (KLR) (2 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21339 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT 107 OF 2022
LC KOMINGOI, J
NOVEMBER 2, 2023**

BETWEEN

**PEGGY KEIWUA 1ST PLAINTIFF
EUNICE NJERI 2ND PLAINTIFF
ANNE MUREI 3RD PLAINTIFF**

AND

**JANE MWIHAKI NDUTI 1ST DEFENDANT
REVEREND HENRY NDUTI MWANGI 2ND DEFENDANT
TRADING AS BY HIS GRACE ENTERPRISES**

RULING

1. This is the Notice of Preliminary Objection dated 30th May 2023. The grounds are;
 - a. That the suit as presented by the Plaintiffs offends the mandatory provisions of Section 11 of the *Civil Procedure Act*.
 - b. That Section 26 (3) and (4) of the *Environment and Land Court Act*, 2011 and Section 9(a) of the *Magistrate's Courts Act*, 2015 cloths magistrates who are duly gazette and have the requisite pecuniary jurisdiction power to handle the suit as presented by the Plaintiff.
 - c. That the Plaintiffs are guilty of forum shopping.
2. On the 17th July 2023, the court with the consent of the parties directed that the preliminary objection be canvassed by way of written submissions.
3. I have considered the pleading, the Preliminary Objection and the written submissions. The issues is whether the preliminary objection herein is merited.



4. In the Complaint dated 15th December 2022, the plaintiff's case is that they paid Kshs.4, 305,000/= towards the purchase of the said plots.

The prayers in the Complaint are for;

- i. Specific performance in terms of the agreement by getting a similar suitable plot that the defendants have fully cleared into their names in terms of the 23rd May 2018 amendment.
- ii. Alternatively, refund of the entire amount paid together with interest at commercial rates as agreed in 2018 stipulations, plus 10% penalty as stipulated in the Law Society of Kenya conditions of sale that were adopted in the original agreement.
- iii. Costs and interest at court rates from the date of judgement.
- iv. Any other further relief that the honourable court deems fit to make.

5. Section 7 (1) of the Magistrate's court Act provides;

“A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed –

- a. Twenty million shillings, whether the court is presided over by a chief magistrate”

6. I agree with the Defendants counsel's submissions that the subject matter of the suit falls within the pecuniary jurisdiction of the Magistrate's Court. I rely on the case of Peter Mburu v Andrew Kimani Adam & 2 others (2016) eKLR where B.N. Olao J stated as follows;

“This Court is aware that following the enactment of the *Environment and Land Court Act* which established the Environment and Land Court, both litigants and their counsels have been of the view that only the Environment and Land Court had the jurisdiction to determine cases involving land. I have always held the view that the enactment of the environment and *Land Act* did not take away the jurisdiction of subordinate courts to handle land disputes where the value of the subject matter falls within those Court's pecuniary jurisdiction. This is because, Section 13 (1) of the *Environment and Land Court Act* which provides for the jurisdiction of the Environment and Land Court states as follows:-

“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 relating to environment and land”
emphasis added

If therefore the Environment and Land Court exercises appellate jurisdiction, it can only do so by hearing appeals from the subordinate Courts or other Tribunals. Parliament could not therefore have intended to take away the jurisdiction that magistrates have all along exercised in land cases where applicable. It is in that regard therefore that Parliament recently through



Statute law (Miscellaneous Amendments) Act No.25 of 2015, amended Section 150, of the *Land Act* 2012 which previously read as follows;

“The Environment and Land Court established in the *Environment and Land Court Act* is vested with exclusive jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act”

Following the amendment that section now reads as follows:-

“The Environment and Land Court established in the *Environment and Land Court Act* and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act”

That amendment also inserted in a new sub Section 3 in Section 26 of the *Environment and Land Court Act* empowering the Chief Justice, by notice in this Gazette, to appoint certain magistrate to preside over cases involving the environment and land in respect of any area of the country....”

7. I am satisfied that this is a suit that ought to have been filed in the Magistrate’s Court.
8. The suit herein is therefore transferred to the Chief Magistrate’s Court Kajiado for hearing and determination. The same shall be mentioned before that court on 13th November 2023 for further orders.

Each party do bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 2ND DAY OF NOVEMBER 2023.

L. KOMINGOI

JUDGE.

In The Presence Of:

Ms. Wafula for Mrs Matata for the Plaintiff.

Mr. Kariuki for the Defendants.

