



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELCA NO. 35 OF 2015

JOHN WAMBUGU MUCHORI.....1ST APPELLANT

JOSEPH KAHUTHU KUNGU.....2ND APPELLANT

JOSEPH KINYUA NGATIA.....3RD APPELLANT

-VERSUS-

THE REGISTERED TRUSTEES AFRICAN

INDEPENDENT PENTECOSTAL CHURCH OF KENYA.....1ST RESPONDENT

EPHANTUS KIAMA KIBE.....2ND RESPONDENT

JUDGMENT

1. This is an Appeal arising from the Ruling and Order of the Honourable C. Mburu (*Miss*), Resident Magistrate Nyeri, dated 22nd October, 2015 as delivered in *Nyeri CMCC No. 251 of 2015; The Registered Trustee African Independent Pentecostal Church of Kenya & Another - vs- John Wambugu Muchori & 2 Others*.

2. By their Complaint dated and filed in the Lower Court on 31st July, 2015, the two Plaintiffs who are the Respondents in this Appeal had sought orders of injunction against the three Defendants (*the Appellants herein*) seeking to restrain them from interfering in any way with Sunday Worship at the 1st Respondent's Gatura Church said to be erected on L.R. No. Iria-ini/Gatundu/440. The Respondents also sought orders restraining the Appellants herein from interfering in any way with tea plucking, coffee picking and the (*activities at*) the multimillion social hall situated on the said parcel of land.

3. Upon being served with the claim, the Appellants filed a Joint Statement of Defence dated 10th August, 2015 denying that the Respondents were entitled to the Orders sought in their Complaint. At Paragraph 4 of their said Joint Statement of Defence, the Appellants pleaded as follows:

“4. The Defendants deny the jurisdiction (of) this Honourable Court as the land and Church in question are in Karatina about five (5) Kilometres from Karatina Law Courts and this Court has no jurisdiction under **Section 12 (of the) Civil Procedure Act**. This Court also has no jurisdiction by virtue of **Article 176(2)(b) of the Constitution and the Environment and Land Court Act Number 19 of 2011**. The Defendants hereby give notice that they shall raise a preliminary objection on this ground.”

4. True to their word, when the matter came up on 17th September, 2015 for hearing of an application for injunctive relief filed by the Respondents and dated 31st July 2015, the Appellants raised a Preliminary Objection based on Paragraph 4 of their Joint Statement of Defence aforesaid. In her Ruling rendered on 22nd October, 2015, the Learned Trial Magistrate found no merit on the objection and dismissed the same with costs to the Respondents.

5. Aggrieved by the said determination, the Appellants termed the decision a miscarriage of justice and filed a six-point Memorandum of Appeal herein dated 16th November, 2015 urging this Court to set aside the Ruling and Orders of the Learned Trial Magistrate dated 22nd October, 2015 and to substitute therefore an order allowing the preliminary objection and striking out the Respondents' suit with costs.

6. When the matter came up for directions the parties agreed that the Appeal be disposed of by way of written submissions. In their

submissions herein dated 22nd July, 2021 the Appellants condensed

their six Grounds of Appeal into one major issue, the same being, whether the Trial Magistrate was right in rejecting their Preliminary Objection which was to the effect that the Resident Magistrate at Nyeri had no territorial jurisdiction to try the suit under **Section 12 of the Civil Procedure Act** given that it was common ground that the subject matter of the suit was an immovable property situated a few kilometers from Karatina Magistrate's Court and the Defendants also reside in Karatina.

7. I have carefully considered the Record of Appeal as well as the written submissions and authorities placed before me by both the Appellants and the Respondents.

8. **Section 12 of the Civil Procedure Act** stipulates that:-

Subject to the pecuniary or other limitations prescribed by any law, suits –

- (a) For the recovery of immovable property, with or without rent or profits;**
- (b) For the partition of movable property;**
- (c) For the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;**
- (d) For the determination of any other right or interest in immovable property;**
- (e) For Compensation for wrong to immovable property;**
- (f) For the recovery of movable property actually under distraint or attachment;**

where the property is situate in Kenya; shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain."

9. In the impugned Ruling delivered on 22nd October, 2015, the Learned Trial Magistrate considered the above provision and concluded as follows at Page 15 of the Ruling:

"Notwithstanding various local geographical limitations in jurisdiction imposed by **Sections 11, 12, 13, 14 and 15 of the Civil Procedure Act**, the Resident Magistrates Courts have jurisdiction throughout Kenya. The Civil Procedure Act, as expressed in its preamble, is "An Act of Parliament to make provision for Procedure in Civil Courts." The Civil Procedure Act, therefore, is not the instrument that confers jurisdiction upon the subordinate Courts since the jurisdiction of the Subordinate

Courts is governed by (the) Magistrates Courts Act which is "An Act of parliament to establish Magistrates' Courts; to declare the jurisdiction and provide for the procedure of such Courts; to provide for appeals in certain cases; and for purposes connected therewith or incidental thereto." The date of commencement of this Act was 1st August 1967 while that of the Civil Procedure Act was 31st January, 1924. Even under the rules of statutory interpretation, if there was a conflict between the two pieces of legislation, and in my view there is none, the Magistrates Courts Act is deemed to have amended the Civil Procedure Act. **Section 3(2)** of the former expressly states that the Resident Magistrate's Court shall have jurisdiction throughout Kenya."

10. From a perusal of the law and the material placed before me, I cannot agree more with the Learned Trial Magistrate. Prior to the enactment of the **Magistrates Courts Act, No. 26 of 2015**, the statute governing the civil jurisdiction of the magistracy was the **Magistrates' Courts Act. Section 3** thereof provided as follows:

"3. (1) There is hereby established the Resident Magistrate's Court, which shall be a court subordinate to the High Court and shall be duly constituted when held by a Chief Magistrate, a Senior Principal Magistrate, a Senior Resident Magistrate or a Resident Magistrate.

(2) The Resident Magistrate's Court shall have jurisdiction throughout Kenya."

11. Considering a similar issue in **Mohamed Sitaban -vs- George Mwangi Karoki C.A No. 13 of 2002**, Ringera J (*as he then was*) observed as follows:

"Section 3(2) of the Magistrate's Courts Act provides that a Court of the Resident Magistrate (*which is defined to include a Senior Principal Magistrates court*) has jurisdiction throughout Kenya. Such a Court is not the subject of the local jurisdiction contemplated by Section 15 of the Civil Procedure Act. In my opinion, Section 15 of the Civil Procedure Act applied only to courts lower than the Resident Magistrates' Court. I am fortified in that view by the fact that the Magistrates

Courts Act, Cap 10 of the Laws of Kenya, was enacted in 1967 long after the Civil Procedure Act.

The legislature was therefore aware of the provisions of Section 15 of the Civil Procedure Act and the hallowed rule of statutory construction that where two provisions in different statutes conflict, the provisions in the latter statute is deemed to amend the earlier provision must be applied.”

12. Arising from the foregoing, I did not find any basis for the contention that the Nyeri Resident Magistrates’ Court had no jurisdiction to entertain the suit that was before the Subordinate Court. While there may be sound administrative, economic and other practical reasons for requiring that suits be filed before the Court within whose local jurisdiction the property is situated, those reasons do not oust the statutory jurisdiction granted to the Courts.

13. Indeed while the Appellants contended that the suit property was within “about 5km” from Karatina Law Courts, there was no tangible evidence placed before the Court to support such a position. There was equally no evidence that the Appellants as Defendants in the matter in the Subordinate Court reside in Karatina. A perusal of their Replying Affidavit filed in response to the Respondent’s application in the Lower Court on 12th August, 2015 reveals the address of the 3rd Appellant who swore the Affidavit on their behalf as P.O. Box 427, Nyeri. Both Karatina and Nyeri Law Courts fall within a short distance of each other within Nyeri County and I was not persuaded that the Appellants were prejudiced in any way by the filing of the suit where it was.

14. The upshot is that I was not persuaded that this matter had been filed in a Court lacking in jurisdiction as purported by the Appellants.

Accordingly their Appeal fails and is dismissed with costs to the Respondents.

Judgment dated, signed and delivered in open court at Nyeri this 3rd day of February, 2022.

In the presence of:

Mr. Mwaniki holding brief for Wahome for the Appellants

Ms. Muthui holding brief for Gathiga Mwangi for the Respondents

Court assistant - Mugambi

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J. O. Olola

JUDGE