



REPUBLIC OF KENYA



**Mwanje v Shikhutuli (Civil Appeal E046 of 2022)
[2025] KEHC 6694 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E046 OF 2022
SC CHIRCHIR, J
MAY 22, 2025**

BETWEEN

ENOCK OROO MWANJE APPELLANT

AND

MAURICE JOMO SHIKHUTULI RESPONDENT

(Being an appeal arising from the Judgement of Hon. Hazel Wandere-SPM delivered on 5/7/2022 in Kakamega CMCC No.53 of 2019)

JUDGMENT

1. By a plaint dated 30th December, 2018 and filed in court on 13/3/2019, the respondent herein sued the appellant for damages for breach of contract entered into on 11/01/2013.
2. It was the respondent's case that the appellant sold him land measuring 0.40 Ha being a portion of land parcel No. N.Kabras/Malava/2576 at a consideration of Kshs.370,000/= which sum the respondent paid in full. The appellant filed a defence dated 29/5/2019 in which he did not deny selling the land to the respondent.
3. After the hearing, the trial court entered judgment in favor of the respondent for Kshs. 370,000/=, interest at court rates from when the suit was filed in court and costs of the suit.
4. Being dissatisfied with the judgment and decree, the appellant filed the memorandum of appeal dated 3/8/2022 and raised several grounds of appeal.

Determination

5. I have perused the plaint and the proceedings of the lower court. The subject matter of the suit is a contract touching on sale of land. Any matter touching on Title to, or occupation to land belongs to the exclusive jurisdiction of the Environment and Land court.



6. Article 162 of the *Constitution* establishes the superior courts in Kenya and Article 162(2) envisages the establishment of specialized courts with equal status with the High Court, to exercise jurisdiction over, among others, occupation of, and title to land.
7. Further Article 165 of the *Constitution* sets out the jurisdiction of the High Court and under 165(5) the *Constitution* expressly bars the high court from handling matters that are reserved for the courts established under Article 162(2), namely the Environment and Land court and the Employment and Labour relations court.
8. Article 165(5) states as follows:
 - “ The High Court shall not have jurisdiction in respect of matters-
 - (a) ...
 - (b) falling within the jurisdiction of the courts contemplated in Article 162(2).”
9. Pursuant to Article 162(2)(3) of the *Constitution*, the *Environment and Land Court Act*, No. 19 of 2011, establishing the Environment and Land Court was enacted. The court has exclusive original and appellate jurisdiction to determine all matters referred to it relating to environment and land. Section 13 of the said Act sets out the jurisdiction of the court which include the power to determine any disputes “ relating to public, private, and community land and contracts, choses in action or other instruments granting any enforceable interests in land; (section 13 (2)(d) of the Environment and Land court.). The Magistrate’s too have jurisdiction over such matters ,pursuant to the provisions of section 26 of the same Act and section 9 of the Magistrate’s court’s Act.
10. The claim herein is arises out of a breach of contract on sale of land. That is to say the subject matter of the dispute touches on land. In the light of the jurisdiction of the Environment and land court as set out above, it follows that any appeals relating to land disputes emanating from the Magistrate’s court’s must go to the court with the jurisdiction to deal with matters land, and that is the Environment and land court, not the high court.
11. It is trite law that jurisdiction is “everything” . Anything done without jurisdiction is a nullity, and such a finding operates retrospectively. In the famous case of Owners of the Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Ltd [1989] eKLR, stated:
 - “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 its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
12. In conclusion it is my finding that this court has no jurisdiction to hear and determine this Appeal. It is hereby struck off with costs to the Respondent.

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

S.CHIRCHIR

JUDGE.

In the presence of:

Godwin Luyundi- Court Assistant.

Mr. Onsango for the Appellant.

