



REPUBLIC OF KENYA



Hombe v Njau (Civil Appeal E070 of 2022) [2025] KEHC 10703 (KLR) (18 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10703 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL E070 OF 2022**

MA ODERO, J

JULY 18, 2025

BETWEEN

EDWARD KIBE HOMBE APPELLANT

AND

PETER WAITITU NJAU RESPONDENT

RULING

1. Before this court is the Notice of Motion dated 30th November 2022 by which the Appellant Edward Kibe Hombe seeks the following orders:-
 - “ 1. Spent.
 2. Spent.
 3. Spent
 4. That pending the hearing and determination of the appeal, there be a stay of proceedings in Othaya Magistrate Court Miscellaneous Civil Application No. E003 of 2022.
2. The application which was premised upon order 42 Rule 6, Order 22 Rule 22 of the Civil Procedure Rules 2010, Section 63E of the *Civil Procedure Act* and all enabling provisions of the laws of Kenya was supported by the affidavit of even date sworn by the Applicant.
3. The Respondent Peter Waititu Njau filed a Replying Affidavit dated 13th April 2023 opposing the application for stay.
4. I have considered this application and indeed the Appeal herein. I note that the subject matter of the suit is the occupation by the Respondent of Plot No. Othaya/Kihugiru/1532 which property is owned by the Applicant.



5. It is therefore quite clear to this court that this matter relates to the question of the occupation of land. The Respondent has annexed documents indicating that there is a pending case involving the same parties before the Business Premises Rent Tribunal being Case No. BPRT/052/2022 (Annexures ‘PWN-1’, ‘PWN-2’ ‘PWN-3’ and PWN -4’)
6. Given this background it is clear to me that this is a matter over which the High Court has no jurisdiction.
7. Article 162 (2) (b) of *the Constitution* of Kenya 2010 provides as follows:-
 - “(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –
 - a.
 - b. The environment and the use and occupation of and title to land.
[Own emphasis]
8. Section 13 of the Environment and *Land Act* sets out the jurisdiction of the ELC. The court has both “Original and Appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of *the Constitution*.....”
9. Therefore any dispute including the present one dispute relating to the ownership, use and occupation of land ought to be litigated in the ELC.
10. It is trite law that when a court find that it has no jurisdiction to handle a matter it must down its tools immediately. In Owners Of Motor Vessel “lilians” -vs- Caltex Oil (K) LTDF [1989] KLR the court of Appeal held as follows:-

“Jurisdiction is everything without which a court of law has no power to make one more step. Where a court of law 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 the moment it holds the opinion that it is without jurisdiction.” [Own emphasis]
11. Based on the foregoing I find that this appeal ought not have been filed in the High Court. The appeal ought to have been filed in the ELC. I therefore decline to proceed with this matter and direct that the file be transferred to the ELC for hearing and determination.

DATED IN NYERI THIS 18TH DAY OF JULY 2025.

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MAUREEN A. ODERO

JUDGE

