



**Mugo v Waitherero & another (Civil Appeal 221 of 2021)
[2024] KEHC 8654 (KLR) (12 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8654 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 221 OF 2021**

**AC BETT, J
JULY 12, 2024**

BETWEEN

ANTHONY NJOGU MUGO APPELLANT

AND

LUCY WAITHERERO 1ST RESPONDENT

MUNICIPAL COUNCIL OF KIAMBU 2ND RESPONDENT

*(Being an Appeal from the Ruling of the Senior Resident Magistrate’s
Court, Thika Law Courts [Hon. V. Kachuodo(SRM)] dated and
delivered on 29th October 2021 in Thika PMCC No. 700 of 2011)*

JUDGMENT

1. By a memorandum appeal dated 11th November 2021, the appellant, being aggrieved with the decision of the lower court dismissing his application for reinstatement of a suit which had been dismissed for what of prosecution appealed against the said decision. He listed seventeen grounds of appeal. Ground number 14 is as follows:-

“The trial magistrate failed to take into account and appreciate the emotive nature, gravity and sensitivity of land matters in our Republic and more specifically in the suit in question which factors make this suit best determined on merits.”

2. The dispute between the parties herein relates to plot and/or stall no. B-87 Makongeni Bus Park in Thika. In his plaint dated 14th October 2011, the appellant prayed, inter alia for the following orders:-

a. “.....

b.



- c. An order of demolition of any illegal structures on plot no. B-87 and eviction therefore
 - d. In the alternative to all the above, that the 2nd defendant be ordered to allocate the plaintiff with (sic) an alternative plot forthwith
 - e.
 - f.”
3. From the memorandum of appeal and pleadings of the appellant, it is quite clear that the subject matter of this suit is land.
4. Section 13 of The *Environment and Land Court Act* states as follows:

“ 13

- (1) 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 applicable in Kenya relating to environment and land.
 - (2) In exercise of its jurisdiction under Article 162 (2) (b) of the *Constitution*, the court shall have power to hear and determine disputes.
 - (a) relating to environmental planning and protection, climate issues, land use, title, tenure, boundaries, rates, rent, valuations, mining, minerals and other resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to land.”
5. In the premises, the entire suit and the present appeal ought to have been filed in the Environmental and Land Court which is the only court vested with jurisdiction to hear and determine disputes relating to land. The court therefore lacks the jurisdiction to hear and determine the appeal.
6. Jurisdiction is pivotal in litigation. Without it, a court cannot make a valid decision. In *Owners of Motor Vessel “lillian S” - v- Caltex Oil Kenya Limited* [1989] KLR 1, Nyarangi JA stated thus:-

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized with the matter is obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one step.”

The respondent in his submissions did not raise the issue of jurisdiction. Despite the failure to object to this appeal I find that my hands are tied. Without jurisdiction, the court has no powers to hear any



matter. It must down its tools. In *Phoenix Of East Africa Assurance Company Limited - V- S.m. Thiga T/a Newspaper Service* [2019]eKLR the Court of Appeal held:-

“Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the court cannot confer jurisdiction to itself.”

7. Before proceeding to hear and determine a matter before it, the law dictates that a court first establishes whether it has the requisite jurisdiction. In the case of *Joseph Njuguna Mwaura And 2 Others - V- Republic* [2013] eKLR, the Court of Appeal held:-

“It is incumbent upon any Court intending to render an opinion or determine a matter to first ascertain the entry point to the doors of justice, and that is jurisdiction. The authority of the court is determined by the existence of the lack of jurisdiction to hear and determine disputes. In essence, jurisdiction is the first hurdle that a Court will cross before it embarks on its decision-making function.”

8. The entry point to the court in this case is the appellant’s plaint which states as follows: -

“5. The 1st defendant has fraudulently and without any color of right, iota of justification or authority encroached on the suit plot, constructed a permanent building thereon despite the plaintiff being the owner hence interfering with the plaintiff’s possession and use.”

9. It is evident that from the outset, the appellant ought to have filed his claim in the Environment and Land Court and not in this court. I hold that I cannot cross this hurdle of jurisdiction as this court is devoid of jurisdiction.

10. The memorandum of appeal dated 11th November 2021 is hereby struck out.

11. Since the 1st respondent did not raise the issue of jurisdiction in the lower court nor in his submissions to the appeal, I order that each party do bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF JULY, 2024.

A. C. BETT

JUDGE

In the presence of:

Ms. Karithu holding brief for Mr. Otuke for the appellant

Ms. Waithera for the 1st respondent

Ms. Maina for the 2nd respondent

Court Assistant: Polycap Mukabwa

