



REPUBLIC OF KENYA



**Bubolu & another v Ouma (Civil Appeal E047 of 2024)
[2024] KEHC 10735 (KLR) (17 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10735 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E047 OF 2024
WM MUSYOKA, J
SEPTEMBER 17, 2024**

BETWEEN

RAPHAEL OJIAMBO BUBOLU 1ST APPELLANT

SARAH OGANA 2ND APPELLANT

AND

NICHOLAS OUMA RESPONDENT

RULING

1. The dispute before trial court was with respect to a contract for sale of land, and it specifically turned on whether an order of specific performance could issue, and, if not, whether the purchase price could be refunded, whereupon the court ordered a refund, with an alternative of specific performance.
2. Contracts for sale of land are regulated by the [Land Act](#), Cap 280, Laws of Kenya, and the [Land Registration Act](#), Cap 300, Laws of Kenya.
3. Article 162 (2) of the [Constitution](#) has reserved jurisdiction over title to land, use and occupation of land to the court to be established, under Article 162 (3), with equal status to the High Court.
4. Article 165 (5) of the [Constitution](#) pronounces that the High Court has no jurisdiction over the matters the subject of Article 162 (2).
5. Parliament complied with Article 162 (3) of the [Constitution](#), by establishing the Environment and Land Court, under the [Environment and Land Court Act](#), No. 9 of 2011, to exercise the jurisdiction reserved under Article 162 (2) of the [Constitution](#), over land matters.
6. Under the [Environment and Land Court Act](#), at section 13, the jurisdiction to resolve disputes over contracts relating to land, including sale of land, is vested in the court established under that Act.



7. Similarly, that court is vested with appellate jurisdiction, by that Act, over decisions of enabled or empowered subordinates courts, with respect to those matters.
8. Under the [Land Act](#), at sections 2 and 150, and the [Land Registration Act](#), at sections 2 and 101, “court” means the Environment and Land Court, and the empowered magistrates courts, and not the High Court.
9. The upshot is that the High Court has no appellate jurisdiction over a decision of an empowered magistrate’s court, where the dispute turns on issues around title, user and occupation of land.
10. Sale of land is about transfer of title from the seller/registered owner to the buyer/future or prospective registered owner.
11. I have no jurisdiction, therefore, to grant the prayers sought, in the Motion, dated 16th September 2024, and I hereby down my tools.

I HAVE DEALT WITH THIS MATTER ON THIS 17TH DAY OF SEPTEMBER 2024.

W.M. MUSYOKA

JUDGE

