



**Ndung'U v Gatere (Civil Appeal E321 of 2024)  
[2024] KEHC 12264 (KLR) (Civ) (15 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12264 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL APPEAL E321 OF 2024  
JN MULWA, J  
OCTOBER 15, 2024**

**BETWEEN**

**THOMAS NDUNG'U ..... APPELLANT**

**AND**

**CATHERINE MUTHONI GATERE ..... RESPONDENT**

*(Being an Appeal against the Ruling of the Honourable Lucy Njora  
(SPM) delivered on 1st February 2024 in MCELC E1621 OF 2020.)*

**RULING**

1. By a Notice of Motion dated 29/5/2024, the Appellant seeks an order that the order of the court dated 8/5/2024 be reviewed and/ or varied to order the sum of Kshs. 500,000/= be paid from the sum of Kshs. 7,000,000/= held in the Appellants joint account number 7500xxxx with Housing Finance Company (HFC) Kenya Limited, upon grounds stated at is face and supporting affidavit he swore on the even date; principally stating that he is unable to raise the sum of Kshs. 500,000/= the court ordered him to deposit as security on 8/5/2024 as he is unemployed and cannot raise the same.
2. He proposes that the said sum be paid out of a joint account No. 7500xxxx he hold with his former wife, the Respondent in this appeal, held at Housing Finance Company Ltd with a credit balance of Kshs.7,000,000/= pending hearing and determination of the appeal, which amount he says will be available at the conclusion of the appeal.
3. In opposition, the Respondent filed a notice of Preliminary Objection dated 30/7/2024 contending that this court lacks jurisdiction to entertain this appeal as the dispute ought to be placed before the Environment and Land Court (ELC).
4. Two issues present themselves for determination:-



- i. on jurisdiction; and
  - ii. on review and or variation of the orders of 8/5/2024.
5. On jurisdiction, once a court finds itself without jurisdiction, it must down its tools as without it, all it does amounts to nothing. Therefore the issue ought to be dealt with in the first instance. See *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited* (1989) IKLR dealt with a court, jurisdiction thus:-

“Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of the proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion it is without jurisdiction.....where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgement is given”.

6. To determine jurisdiction, the pleadings and cause of action in the trial court in *MCELC E621 of 2020* must be perused and considered. I have done so, together with the judgement as well as the Memorandum of Appeal filed herein.

Without a doubt, it is clear that the dispute concerns the use and occupation of the suit premises, trespass and compensation for rent arrears and mesne profits.

7. The trial magistrate in her judgment dated 23/1/2024 issued a mandatory injunction directing the Defendants, now the Appellants to pay all outstanding service charge, water and electricity before eviction of the defendants from the suit premises.
8. These are the orders, among others, that are subject of the appeal herein, and the motion before the court.

It is therefore an appeal that ought to have been filed before the ELC that by dint of Section 13 of the *ELC Act* grants it jurisdiction to preside over land disputes as is the case herein.

9. For the going, having found that the appeal belongs to the ELC, this court downs its tools and exercises its jurisdiction to either dismiss the appeal for having been filed in a court without jurisdiction; or to order a transfer of the appeal to the ELC.
10. The Preliminary Objection is allowed and the appeal is transferred to the ELC for further directions on the motion dated 29/5/2024.

Orders accordingly.

**DATED SIGNED AND DELIVERED IN NAIROBI THIS 15<sup>TH</sup> DAY OF OCTOBER 2024.**

**JANET MULWA**

**JUDGE**

