



**Blue Sands Hotel Limited v Abdallah (Civil Case 68 of 2003)
[2023] KEHC 42 (KLR) (17 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 42 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL CASE 68 OF 2003
RE ABURILI, J
JANUARY 17, 2023**

BETWEEN

BLUE SANDS HOTEL LIMITED PLAINTIFF

AND

KASSIM WERE ABDALLAH DEFENDANT

RULING

1. There is no evidence that parties counsel were served for today as directed on November 17, 2022. However, I have perused the pleadings and especially the proposed amended Plaintiff and what I find is the Plaintiff's claim against the Defendant is for transfer and title of land and in the alternative, eviction of the Defendant from land parcel measuring 0.6 ha of Kisumu/Kogony/4076, 7441 and 7442.
2. That claim in itself is not within the jurisdiction of this court as the jurisdiction is ousted by Article 162(2) (b) and 165(5)(b) of the Constitution as read with Section 13(1) and (7) of the Environment and Land Court Act which provisions are clear, that all disputes relating to the environment and the use of and occupation of land and title to land shall be heard and determined before the Environment and Land Court.
3. Albeit this suit and the prayers sought were filed in 2003 before the promulgation of the 2010 Constitution and the enactment of enabling legislation to implement Article 162(2)(b) of the Constitution, the transitional and consequential provisions of the Constitution are clear on how existing laws should be construed.
4. Further, as we are no longer in transition, I find this suit not to be properly before this court. It should have, during the transition period, been placed before the Environment and Land Court for hearing and final determination.



5. In the premises, I hereby decline to hear and determine the merits of this suit or any applications thereto and direct that the entire file be placed before the Environment and Land Court, Kisumu, for further directions.
6. Parties counsel to be notified forthwith.
7. I so order.

Dated, signed and Delivered at Kisumu this 17th Day of January, 2023

R.E. ABURILI

JUDGE

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