



REPUBLIC OF KENYA



**Meroka v Cherogoe (Miscellaneous Civil Case 38 of 2022)
[2023] KEHC 927 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 927 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS CIVIL CASE 38 OF 2022
AN ONGERI, J
FEBRUARY 10, 2023**

BETWEEN

ESNAH KWAMBOKA MEROKA PLAINTIFF

AND

SHADRACK KOSKEI CHEROGOE DEFENDANT

RULING

1. The respondent herein raised a notice of preliminary objection (NOPO) dated December 5, 2022 on the following grounds;
 - i. That this matter is an Environment and lands Court matter and the proper forum should be in the ELC Court.
 - ii. That the application dated October 14, 2022 is in contravention of Order 43 of the Civil Procedure Rules.
2. The respondent filed written submissions in support of the notice of preliminary objection which I have duly considered.
3. The respondent submitted that the crux of the matter was a contract for purchase of Kericho/kipchimchim/2722. The defendant/ applicant breached the contract forcing the plaintiff/respondent to seek redress from the Chief Magistrate Court *vide* ELC Case No E020 of 2021 *Esnah Kwamboka Meroka v Shadrack Koskei Cherogoe*, the matter was heard and determined in favour of the respondent on March 21, 2022.
4. The respondent submits that she is in the process of realizing the fruits of the judgment herein, however, the applicant has tried to stall the process severally *vide* multiple applications.



5. The respondent further submitted that the applicant having exhausted all available avenues in law, erroneously and purposefully filed the matter in the wrong forum aimed at wasting precious judicial time, and it was against such background she lodged the instant notice of preliminary objection.
6. The respondent contended that the genesis of the suit before the lower court was a dispute on a contract for purchase of land which squarely fell under the jurisdiction of the Environment and Land Court as espoused in article 162 (2) (b) of the Constitution and section 13 of the Environment and Land Court. The respondent cited the case of Ernest Kevin Luchidio v Attorney General & 2 Others [2015] eKLR .
7. The respondent contended that the court lacks the jurisdiction to entertain the application lodged by the applicant and should down its tools with costs to the applicant. The respondent cited the celebrated case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR in which the court stated as follows; "Jurisdiction is everything. Without it, a court has no power to make one more step."
8. The respondent further contended that the applicant was required to obtain leave of the court before propounding the application seeking a chance to be heard as envisaged in section 75 (1) of the Civil Procedure Act and order 43 rule 1 sub-rule 3 of the Civil Procedure Rules and therefore the application dated October 14, 2022 was in contravention of the said rules of procedure which are couched in mandatory terms. The respondent cited the case of Serephen Nyasani Menge v Rispah Onsase [2018] eKLR & Mbaraka Suleiman Mbwana v Nasoro Bakari Nguta & Another [2021] eKLR.
9. The sole issue for determination in this ruling is whether this court has jurisdiction to handle this matter.
10. There is no dispute that this matter arose out of a land transaction between the parties.
11. The proper forum for this case is the ELC court. I wish to associate myself with the findings of the Supreme Court of Kenya in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR which are as follows: "A Court's jurisdiction flows from either the Constitution or Legislation or both. Thus, a court can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law... Where the Constitution exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation."
12. I hereby dismiss the application dated October 14, 2022 for want of jurisdiction.
13. Each party to bear its own costs of the application.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 10TH DAY OF FEBRUARY, 2023.

A. N. ONGERI

JUDGE

