



Oyany v African Banking Corporaton Ltd & 2 others (Commercial Case 81 of 2018) [2023] KEHC 2797 (KLR) (21 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2797 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
COMMERCIAL CASE 81 OF 2018
RE ABURILI, J
MARCH 21, 2023**

BETWEEN

ABSALOM PETER O. OYANY PLAINTIFF

AND

AFRICAN BANKING CORPORATON LTD 1ST DEFENDANT

LANDSCAN ASSOTIATES CO. LTD 2ND DEFENDANT

ATTORNEY GENERAL (ON BEHALF OF THE KISUMU COUNTY REGISTRAR AND KISUMU COUNTY SURVEY, MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT) 3RD DEFENDANT

RULING

1. This suit was instituted on July 12, 2018. The prayers sought include an order directing the County Surveyor, Kisumu and Land Registrar, Kisumu to cancel amendments to the Land Parcel Kisumu/ Kasule Registry Index Map Sheet 8 affecting reposting, removing, altering or in any other manner interfering with Kisumu/Kasule/4642, 4950 and 4737 made in 2028.
2. The Plaintiff also seeks that the County Land Surveyor and Land Registrar be ordered to rectify Registry Index Map for Kisumu/Kasule Sheet 8 reverting Kisumu/Kasule/4642 and 4950 to their original position as at 2013.
3. The Plaintiff also seeks for a permanent injunction restraining the 1st Defendant from trespassing on LR Kisumu/Kasule/4950 and general damages for trespass onto the Plaintiff's parcel of land Kisumu/ Kasule/4950.
4. From the prayers above sought, and as rightly acknowledged by all the parties respective counsel, there is the question of whether this court has jurisdiction to hear and determine this suit or whether the jurisdiction falls within the Environment and Land Court – ELC.



5. Article 162(2) (b) of the Constitution contemplates the establishment of the Environment and Land Court and confers it with jurisdiction to hear and determine disputes relating to environment, use, occupation and title to land.
6. In addition, Article 165(5) (b) of the Constitution expressly bars the High Court from hearing and determining disputes exclusively reserved for the Supreme Court and the courts contemplated in Article 162 (2) of the Constitution namely, the Environment and Land Court and the Employment and Labour Relations Court.
7. Parliament enacted the Environment and Land Court Act in 2011 and conferred on it jurisdiction to hear and determine disputes as stipulated in Article 162 (2) (b) of the Constitution. Section 13(1) and (7) of the said Act confers jurisdiction on the ELC and the orders/reliefs that the said court can grant are clearly spelt out. No doubt, a reading of the plaint dated June 26, 2012 and the prayers sought shows that the matter is beyond being of a commercial nature. It transcends to rectification of Registry Index Map Sheet and the effect thereof is to alter the titles the way they are.
8. In addition, a claim for trespass to land is a matter of occupation of land. Damages for trespass to land and a permanent injunction to restrain trespass to land are orders which the ELC is empowered to grant under Section 13(7) of ELC Act.
9. For the above reasons, I find that this court is deprived of jurisdiction to hear and determine this suit and without jurisdiction, a court of law acts in vain.
10. I down my tools, say no more than direct that this file be placed before the Environment and Land Court Kisumu for further consideration.
11. The proceedings and Ruling to be typed forthwith.
12. This file in the High Court is accordingly closed. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 21ST DAY OF MARCH, 2023

R. E. ABURILI

JUDGE

