



**Njiru v Muchangi & another (Civil Appeal 34 of 2022)
[2023] KEHC 19144 (KLR) (14 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19144 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL 34 OF 2022
LM NJUGUNA, J
JUNE 14, 2023**

BETWEEN

CYRUS NJIRU APPELLANT

AND

JACOB MUCHANGI 1ST RESPONDENT

ROY ANTHONY MUGO KAUGI 2ND RESPONDENT

JUDGMENT

1. The appeal herein arose from the ruling of Hon Nyakweba delivered on June 2, 2022, in CMCC No 67 of 2018 at Embu. Being dissatisfied with the said ruling, the appellant filed the appeal herein in which he has listed Five (5) grounds of appeal in the memorandum of appeal dated July 1, 2022.
2. The 1st respondent filed a preliminary objection dated January 23, 2023 citing reasons that the appeal was filed out of time without leave of court and therefore, the same was incompetent.
3. The preliminary objection and the appeal proceeded by way of written submissions and wherein the appellant submitted that the subject matter of the appeal was made and is dated June 2, 2022 while the memorandum of appeal was filed on July 4, 2022. That where an appeal lies from the decision of the subordinate court to the High court, it should be made within 30 days from the date of the decision. In the case herein, it was the appellant's submission that the ruling having been made on June 2, 2022, time therefore commenced running from June 3, 2022 and therefore the last day that the memorandum of appeal should therefore have been filed was July 3, 2022 and the same fell on a Sunday which day is excluded under Order 50 Rule 2. That as a result, the preliminary objection herein has no merit and the same should therefore be struck out.
4. On grounds 1,2,3,4 and 5, the appellant submitted that the learned magistrate misdirected himself on the meaning of 'an aggrieved person' in relation to review under section 80 of the *Civil Procedure Act* and Order 45 of the *Civil Procedure Rules*. That an aggrieved party is enjoined into such a suit without



any other ceremony or leave; all he needs is his grievance. It was argued that the magistrate fell into error by shutting out the appellant herein in an unjust manner yet all that the appellant needed was simply a review and not a fresh suit. The appellant therefore urged this court to be pleased to exercise its discretion and review the lower court's orders dated March 23, 2021 in CMCC No 67 of 2018 and costs of the suit both in lower court and this court.

5. The 1st respondent submitted that the appeal herein was filed out of time. It was his case that the appeal is incompetent for that reason. That the appeal dated July 1, 2022 was filed in court on July 4, 2022 against a ruling delivered on June 2, 2022. It was argued that the appellant was aware of the timelines and that having found that he was time barred, the ideal way of proceeding would have been by way of seeking for leave to file appeal out of time. Further, that the trial magistrate was right in dismissing the application for the reason that the appellant had not sought for orders to be enjoined as a party in the proceedings before the lower court. That the trial court correctly noted that it was the 2nd respondent who was indirectly approaching the court in an attempt to realize the orders sought herein through the appellant. In the same breadth, it was submitted that the advocates for the appellant are improperly on record in that, the law firm of Morris Njage did not file a Notice of Appointment and therefore, all the documents on record filed by the said firm are improperly before the court.
6. That notwithstanding, the 1st respondent also addressed the court on the issue of jurisdiction and argued that, this court previously had pronounced itself via a judgment dated July 20, 2022 wherein the court stated that it was not possessed with the jurisdiction to deal with the matter and thus proceeded to strike out the appeal. That even after delivery of the said judgment, the same has neither been appealed against nor set aside; further he argued that the dispute before the lower court which provoked the appeal herein is squarely a land dispute and therefore, the same ought to be before the ELC Court.
7. This court has noted that the 2nd respondent did not file any submissions in the appeal herein.
8. The court has considered the grounds of appeal and the submissions by the parties and the court forms the view that the main issue for determination is whether the appeal has merits.
9. This court has perused the record and the same shows that, the case the subject matter of this appeal is land. The application being appealed against is in reference to the court orders of March 23, 2021, the effect of which, gave ownership to one Racheal Wanyaga Njeri yet the title deed was in the name of the appellant herein. In my considered view, the main issue in contest is land and the aspect of failing to enjoin the appellant herein is a mere auxiliary to the main issue in contest.
10. It is important to note that, with the enactment of the *Environment and Land Court Act* of 2012, the jurisdiction to determine disputes relating to ownership and use of land is bestowed on the Environment and Land Court. It is my considered view, as such, that issues arising from the instant appeal are not within the jurisdiction of this Honourable Court. [See the decision of the Supreme Court in the case of *Nasra Ibrahim Ibren Vs Independent Electoral and Boundaries Commission & 2 others*, Supreme Court Petition No 19 of 2018- paragraph 40).

This is for the reason that where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing as jurisdiction must be acquired before a case can be heard. [See the case of *Owners of the Motor Vessel "Lillian S" Vs Caltex Oil (Kenya) Ltd* [1989] eKLR].



11. Similarly, in the case of *Samuel Kamau Macharia & another Vs Kenya Commercial Bank Limited & 2 others* [2012] eKLR, where the Supreme Court held as hereunder;

A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law 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. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. [Also see Articles 165 (5) and 162 (2) of the constitution; and Section 13 of the Environment and Land Court Act].

12. From a reading of Article 162 of the *Constitution*, it is clear that the *Constitution* intended to create special courts with special jurisdiction in land matters. That jurisdiction is not donated to the High Court.
13. In view of the foregoing, I therefore hold that;
- i. This court is bereft of jurisdiction to determine the appeal herein.
 - ii. The same is struck out with no orders as to costs.
14. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 14TH DAY OF JUNE, 2023.

L. NJUGUNA

JUDGE

.....for the Appellant

.....for the Respondents

