



REPUBLIC OF KENYA



KENYA LAW
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**Shiroya v Luka & 2 others (Civil Suit 60 of 2000)
[2023] KEHC 20030 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20030 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL SUIT 60 OF 2000
SC CHIRCHIR, J
JULY 6, 2023**

BETWEEN

ERNEST MILIKAO SHIROYA PLAINTIFF

AND

TOMAS MUONGO LUKA 1ST DEFENDANT

RICHARD MUSEBE ONYANGO 2ND DEFENDANT

LAETTIA MULAMULA 3RD DEFENDANT

RULING

1. This matter was placed before me on May 4, 2023 for mention to confirm filing of submissions in respect to the Application dated September 15, 2021.
2. I then scheduled the ruling for July 6, 2021. However, in the course of writing the Ruling, I noticed that the subject matter of this suit is land. The plaintiff is seeking for, among others, cancellation of title.
3. Pursuant to Article 165(5) of the *Constitution*, this court is barred for entertaining matters falling within the jurisdiction of the courts contemplated in Article 162(2). One of the Courts established pursuant to order 162(2) is the Environment and Land Court.
Section 13 of the *Environment and Land Court* confers the jurisdiction on matters of land to the said court. This court therefore has no jurisdiction to determine this case.
4. When a court lacks jurisdiction the automatic remedy is to strike off the suit. In the present case, however, I notice that the suit was filed prior to the advent of the 2010 Constitution and the attendant establishment of the Environment and Land Court. Thus, striking out the suit for want of jurisdiction will go against the legitimate expectation of the parties when they first filed the suit, as well as the interest of justice.



5. Consequently, I hereby order this suit be transferred to the Environment and Land court for disposal.
6. The matter to be given a mention before the Deputy Registrar Environment and land court on the date of the delivery of this ruling

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 6TH DAY OF JULY, 2023

S. CHIRCHIR

JUDGE

In the presence of:

Eric- Court Assistant

Richard Musebe- The 2defendant.

