



Rajula v Attorney General & another; Omwala (Sued as the Legal Representative of the Estate of the Deceased Domitila Oyoyo) & another (Interested Parties) (Petition E002 of 2024) [2024] KEHC 15757 (KLR) (16 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15757 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
PETITION E002 OF 2024
WM MUSYOKA, J
DECEMBER 16, 2024**

BETWEEN

JOHN WALOBWA RAJULA PETITIONER

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

BUSIA COUNTY LAND SURVEYOR 2ND RESPONDENT

AND

PRISCA OMWALA (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE DECEASED DOMITILA OYOYO) INTERESTED PARTY

EMMANUEL ODUOR NANJI INTERESTED PARTY

RULING

1. The proceedings herein commenced by way of petition, dated 8th April 2024, for declarations, with respect to the decision of the Butula Lands Tribunal, on Marachi/Elukhari/1334, on grounds that it was ultra vires jurisdiction of the land disputes tribunal, violated the right to ownership of property, violated the right to fair administrative action, and the petitioner was entitled to registration as the legitimate owner of the property.
2. The background given was that the land originally belonged to his late father, who caused it to be jointly registered in his name, that is the petitioner, and his stepmother, with the stepmother holding it in trust. When the stepmother died, her son sought to have it devolved to her, in probate proceedings in her estate. The probate court eventually awarded the land to the petitioner, and the same was registered in his name, and a title deed was issued. His stepbrother then filed a land case, which was heard, and the land was awarded to the petitioner. The stepbrother then moved to the High Court, but the High



- Court dismissed his claim for want of prosecution. He then moved to the land disputes tribunal, where he got a favourable award, the one now challenged in these proceedings. After that the award was made an order of the court, and the stepbrother got the land subdivided. The petitioner argues that the decision by the tribunal was unconstitutional.
3. Upon being served, the respondents filed a notice of preliminary objection, dated 5th July 2024; while the 2nd filed an affidavit in reply, sworn on 12th June 2024.
 4. The preliminary objection, by the 1st and 2nd respondents, turns on jurisdiction, on the basis that the High Court would have no jurisdiction over the petition, in view of Articles 162(2)(b) and 165(5)(b) of the Constitution, and section 13 of the Environment and Land Court Act, Cap 8D, Laws of Kenya. It is posited that section 13 of the Environment and Land Court Act grants appellate jurisdiction on that court, over the decisions of subordinate courts, on matters turning on environment and land. There is also the issue of limitation of actions, the suit having been allegedly filed outside of the 12-year limitation, contrary to section 7 of the Limitation of Actions Act, Cap 22, Laws of Kenya.
 5. The 2nd interested party deposes on facts relating to how he purchased a portion of the subject property from the stepmother of the petitioner, and the property was registered in his name. He asserts that the decision of the tribunal was never appealed against, and an application for its review was dismissed. He avers that he filed suit at the Environment and Land Court, against the petitioner, for a permanent injunction, and the same was granted, and when the petitioner disobeyed the order, he was cited for contempt, and was jailed. The petitioner filed his own suit at the Environment and Land Court, which was dismissed. He avers that the petitioner had previously filed another suit at the magistrates courts, which was also dismissed. He asserts that the petition is re judicata the earlier suits, it contravenes the doctrine of avoidance, it is statutorily time-barred, the court lacks jurisdiction, among others.
 6. The 2nd respondent subsequently filed a preliminary objection, dated 5th August 2024, wherein he pointed at the averments made in his replying affidavit.
 7. I gave directions on 22nd July 2024, that the preliminary issues, flagged by the respondents, be disposed of first, by way of written submissions. All the 3 sides, who had filed pleadings, filed written submissions. I have read them, and noted the arguments advanced in them.
 8. Jurisdiction is at the core of exercise of mandate by the courts, and where it lacks the court ought not proceed further, for it should down its tools over the matter, in respect of which jurisdiction lacks. See Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR (Nyarangi, Masime & Kwach, JJA) and Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR (Mutunga CJ, Tunoi, Ojwang, Wanjala & Ndung'u, SCJJ).
 9. The petition herein turns on land issues. The dispute has been the subject of numerous cases, handled by a quasi-judicial tribunal and the courts at various levels. It has been to the magistrates courts, the High Court and the Environment and Land Court. From what I have read, in the papers before me, it turned on title or ownership. The petitioner initially had title to it, jointly with his stepmother. After she died, succession proceedings were conducted, and the property was wholly devolved upon him. Thereafter, a matter was filed at the tribunal, where ownership was given to the stepbrother of the petitioner. The petition asserts the ownership rights of the petitioner to that land, and questions the jurisdiction of the tribunal to determine the issue of ownership of the land.
 10. Prior to 2010, the High Court had jurisdiction to address questions around title, ownership and user of land. The Environment and Land Court did not exist then. When the new Constitution was promulgated, in 2010, the Environment and Land Court, came into being, and the High Court lost jurisdiction to it, over issues relating to land use, title and ownership. The Constitution provided for



the establishment of that court, under Article 162(2), to handle those matters. Parliament acted as commanded by Article 162(3) of the Constitution, and passed a law, Environment and Land Court Act, which established the court envisaged under Article 162(2), and defined its jurisdiction, under section 13, which was in line with Article 162(2).

11. The fact that the Environment and Land Court Act has exclusive jurisdiction over those matters is underlined by Article 165(5), which states that the High Court shall have no jurisdiction over the matters reserved for the Environment and Land Court Act under Article 162(2). So, sitting as a Judge at the High Court, I would have no jurisdiction whatsoever to determine ownership of land. The petition before me asserts a right to ownership of land, and invites me to declare that the petitioner was entitled to be registered as owner of the land in question. If I were to do that, I would be violating Article 165(5) of the Constitution.
12. I am alive to the fact that Article 165(3) of the Constitution grants the High Court mandate to handle disputes of a constitutional nature, around the Bill of Rights and interpretation of the Constitution. It is on that account that some consider the High Court to be some sort of a constitutional court. However, in spite of that, all the courts, right from the magistrates courts to the Supreme Court, have a mandate to handle disputes that turn on constitutional questions, and the legislation, conferring jurisdiction on those courts, relating to a variety of subjects, has extended jurisdiction to those other courts. Therefore, consideration of constitutional provisions, and determination of questions on the application of the Constitution, is not the exclusive reserve of the High Court. I am tempted to presume, that the petitioner herein, filed this cause here with the mindset that the High Court is the constitutional court.
13. The issues, flagged in the petition, turn exclusively on ownership of property, and whether the tribunal had jurisdiction to handle those issues. Those are issues that are beyond my scope, for the reasons that I have given above. Ownership of land is now the subject of the Land Act, Cap 280, Laws of Kenya, and the Land Registration Act, Cap 300, Laws of Kenya. Land, in Kenya, has been subjected to registration and titling. Ownership is determined on the basis of an ownership document, issued and guaranteed by the Government, taking the form of a title deed.
14. Under the Land Act and the Land Registration Act, when disputes arise over land, on any subject or aspect, the courts to handle such disputes, would be the Environment and Land Court and the empowered subordinate courts. Those provisions are carried at sections 2 and 150 of the Land Act and sections 2 and 101 of the Land Registration Act. No provisions of the Land Act and the Land Registration Act provide for the jurisdiction of the High Court over any of the matters that are the subject of those 2 statutes. The High Court would then have no jurisdiction, to venture into the determination of any dispute, which touches on the aspects of land, that are the subject of those 2 statutes. Ownership of land is exclusively defined and regulated by the 2 statutes, and there would be no jurisdiction for the High Court, to make any pronouncement on who would be entitled to ownership of the land in dispute.
15. As I have no jurisdiction to handle the petition herein, for the reasons given above, I would have no jurisdiction to deal with the other issues raised, as to whether the filing of the petition was a foul of the limitation law, and whether it is res judicata the decisions made earlier by the other courts.
16. In view of everything that I have said above, I hereby find and hold that there is merit in the preliminary objection raised. I uphold it, by declaring that the High Court has no jurisdiction to handle the instant petition. As there is no jurisdiction, I would have no power to order transfer of the matter to the court with jurisdiction. I shall, accordingly, strike out the petition. Each party shall bear their own costs. It is so ordered.



DELIVERED VIA EMAIL, DATED AND SIGNED, IN CHAMBERS, AT BUSIA, THIS 16TH DAY OF DECEMBER 2024.

W. MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Eva Adhiambo, legal researcher.

Advocates

Ms. C. Masakhwe, instructed by Consilatah Masakhwe & Company, Advocates for the petitioner.

Mr. Dan Simiyu, instructed by the Honourable the Attorney General, for the respondents.

Mr. James Were, instructed by Fwaya Masakhwe Were & Company, Advocates for the 2nd interested party.

