



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CIVIL SUIT NO. 111 OF 2019**

**JOSEPH MWIRIGI M'ITHIR.....APPLICANT**

**VERSUS**

**SOLOMON GICHURU MAUGO.....RESPONDENT**

**RULING**

1. This matter was listed for the purposes of mention. The purpose of the mention was however not disclosed. When called out Mr Wanjohi Advocate asked the court to dismiss it on the basis that it was filed before a court without jurisdiction and that a similar application over the same decision had been lodged and pursued before the ELC, Meru and has since been determined. The court sought to be urnished with the determination by the Judge in Meru ELC Misc App No. 68 of 2019 to help discern the relationship between the two applications.

2. I have now been availed the ruling by Lucy Mbugua J. In Meru ELC Misc. Application No. 68 of 2019 dated 14.12.2020 by Mr Wanjohi. From the ruling, I discern that the application and the resultant ruling concerned the decision of the trial court, in Civil Suit No. 77 of 2008, said to have been delivered on 24.1.2018, by Hon. H. N. Ndungu, CM. That is the same decision the applicant here seeks to challenge by an appeal to be filed out of time.

3. That decision is evidently from a suit in which the respondent sought to have his adverse possessory rights decreed by the court. The court acceded to the plea and entered judgment against the applicant herein.

4. From the record of the application filed and the ruling by the ELC court, I have no hesitation in finding that the dispute before the lower court was a claim over use and occupation of land as well as title to land. Such is decreed by the Constitution, under Article 162(2)b as read with 165(2)b to be in the domain and exclusive jurisdiction of the Environment and Land Court and not this Court.

5. Accordingly, the application was lodged in a court without jurisdiction and the only option open to court is to have it struck out. I do so strike it out with costs.

6. In addition, it is apparent that the current application was filed on 9.10.2019 some seven or so days before the ELC application was filed. Despite having been filed earlier it would appear there was more vigour to prosecute the ELC matter while this was kept pending. The consequence is that when the ELC matter was dismissed on the merits the current application was caught up by section 7 of the Civil Procedure Act and this court is barred from entertaining it even if the court had jurisdiction over the matter. Even on account of the principle of res-judicata. The application still invites only one inevitable order of striking out.

7. I order that the application dated 24.9.2019 be struck out with costs to the respondent.

**DATED SIGNED AND DELIVERED THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2021**

**PATRICK. J.O OTIENO**

**JUDGE**