



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CIVIL CASE NO. EOO5 OF 2021

DAN MAURICE HAYA.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF SIAYA.....DEFENDANT

RULING ON JURISDICTION OF THE COURT

1. The plaintiff in this suit as filed on 5th March 2021, is **Dan Maurice Haya**. He has sued the County Government of Siaya claiming for:

a) Mesne profits accrued from Land Parcel No. South Sakwa/Barkowino/3205 for over the span of 17 years that the Defendant has been in occupation of the suit property, calculated at the current market rates;

b) A declaration that the defendant's continued occupation of the suit property is irregular, illegal, in bad faith and amounts to trespass.

c) An order of eviction do issue against the defendant and/or their agents from using or accessing the land in any manner and for the Defendant to be ordered to vacate the suit property and give back possession of the property to the plaintiff with immediate effect.

d) Damages for trespass.

e) Costs and interest of this suit.

f) Any other remedy the court (sic).

2. From the above prayers in the plaint dated 5.3.2021, the question that this court must pose and answer on its own motion is whether it has the requisite jurisdiction to hear and determine the issues raised in the suit.

3. Jurisdiction is everything, without which a Court of Law acts in vain as it has no power to make one more step. Once the Court is persuaded that it lacks jurisdiction to hear and determine a matter, or suit, it must down its tools. There would thus be no basis for the court that has no jurisdiction to continue proceedings pending other evidence. See **Owners of the Motor Vessel "Lilian 'S' Vs Caltex Oil (Kenya) Ltd [1989] KLR 1 per Nyarangi J.A.**

4. Jurisdiction is the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute or Constitution. Jurisdiction cannot be imposed by parties to a suit or dispute and not even by consent or agreement of the Parties.

5. The framers of the Constitution of Kenya 2010 in their wisdom created **Article 165** conferring upon the High Court wide jurisdiction stipulated thereunder. Other jurisdiction is vested in this Court by various statutes.

6. In the same **Article 165 of the Constitution**, the jurisdiction of this Court is expressly limited.

7. In addition, under Article 162(2) of the Constitution, two courts of the same status of the High Court are contemplated to be established to hear and determine specific disputes namely, Environment and Land and Employment and Labour Relations. Under clause 3, **Parliament shall determine the jurisdiction and functions of the contemplated in clause 2.**

8. In addition, **Article 165(5) (b) of the Constitution** is clear that:

(5) *“The High Court shall NOT have jurisdiction in respect of matters-*

(a) Reserved for the exclusive jurisdiction of the Supreme Court Under this Constitution; or

(b) Falling within the jurisdiction of the Courts contemplated in Article 162(2)

9. I reiterate that the Courts contemplated in **Article 162(2) of the Constitution** are the **Employment and Labour Relations Court and the Environment and Land Court**. The latter Court is established Under **Section 4 of the Environment and Land Court Act, Chapter 12A of Laws of Kenya**.

Section 2 defines Court to mean the **Environment and Land Court** established Under **Section 4 of the Act**.

10. Jurisdiction of the **Court** is provided for Under **Section 13(1) and (2) of the Act** which jurisdiction is both original and appellate in all disputes in accordance with **Article 162 (2) (b) of the Constitution** and provisions of the Act or any other Law applicable in Kenya relating to Environment and Land.

11. Under **Section 13(2) of the said Act**, the **Court** is empowered to hear and determine disputes:-

(a) Relating to Environmental Planning and Protection, Climate issues, Land use Planning, Title, tenure, Boundaries, Rates, Rents, Valuation, Mining, Minerals and other Natural Resources;

(b) Relating to compulsory acquisition of Land.

(c) Relating to Land Administration and Management;

(d) Relating to Public, Private and Community Land and Contracts, Closes in action or other instruments granting any enforceable interests in land;

and

(e) Any other dispute relating to Environment and Land.

12. Under **Section 7 of the Act**, the **Court** in exercise of its Jurisdiction has power to make orders and grant reliefs as the Court deems fit and just including:-

(a) Interim or Permanent Preservation Orders including

Injunctions

(b) Prerogative (Judicial Review)Orders

(c) Award of damages

(d) Compensation

(e) Specific performance

(f) Restitution

(g) Declaration

(h) Costs.

13. Having stated the above, the question is whether this Court has jurisdiction to make Orders sought in this suit. The Orders sought are summarized at the commencement of this Ruling. They include:-

(a) Mesne profits accrued following the defendant’s alleged refusal to give vacant possession of the land to the Plaintiff’s family

(b) A declaration that the defendant’s continued occupation of the suit property is illegal, irregular, in bad faith and amounts to trespass

(c) Eviction Orders

(d) Damages for trespass

14. Obviously, had this suit been instituted by the plaintiff in person, I would have forgiven him for ignorance of the clear provisions of the Law. However, because the suit was instituted by an Advocate of the High Court of Kenya, he cannot pass for any other busy body purporting to practice Law. Practice of Law also includes knowledge of the Law, the Constitution and application of the same to every instruction or fact presented by a client or potential client. A client is not just a client because one must take instructions from them to file suit in Court. A client is a client even when an Advocate advises that person and the advise includes advising on the correct venue or Court where a suit of this nature ought to be filed, in accordance with the dictates of the Law.

15. In the present case, it is clear that the High Court has no Jurisdiction not even split jurisdiction to hear and determine the filed dispute or to make any of the Orders Sought. The claim is also not eclectic at all meaning there is no confusion about whether the dispute relates to land and occupation thereof.

16. The Court that is clothed with relevant jurisdiction is the Environment and Land Court. That being the case, this Court must refuse to entertain the dispute at this early opportunity and this kind of decision does not require this court to invite parties to argue on the issue of whether or not the Court has jurisdiction. I am fortified by the Supreme Court and Court of Appeal decisions below that a court of law has power on its own motion to determine a jurisdictional issue without involving parties to the dispute.

17. In **Anaclet Kalia Musau v Attorney General & 2 Others [2020] eKLR, Civil Appeal 111 of 2017**, the Court of Appeal citing a Supreme Court decision and its own decisions agreed with my decision to determine a jurisdictional issue which was never raised by the parties to the suit. The Court of Appeal stated:

“The solitary issue in this appeal is, whether the suit before the High Court was statutorily time barred. To demonstrate that time limitation is a jurisdictional question and that if a matter is statute-barred a court has no jurisdiction to entertain it, we cite the decision of the Supreme Court in the case of Nasra Ibrahim Ibren V. Independent Electoral and Boundaries Commission & 2 others, Supreme Court Petition No. 19 of 2018, where that court stressed the fact that jurisdiction is everything and that a court may even raise a jurisdictional issue suo motu. It said:

“40 A jurisdictional issue is fundamental and can even be raised by the court suo motu as was persuasively and aptly stated by Odunga J in Political Parties Dispute Tribunal & another v Musalia Mudavadi & 6 others Ex Parte Petronila Were [2014] eKLR. The learned Judge drawing from the Court of Appeal precedent in Owners and Masters of The Motor Vessel “Joey” vs. Owners and Masters of The Motor Tugs “Barbara” and “Steve B” [2008] 1 EA 367 stated thus:

“25. What I understand the Court to have been saying is that it is not mandatory that an issue of jurisdiction must be raised by the parties. The Court on its own motion can take up the issue and make a determination thereon without the same being pleaded...” (Emphasis supplied)

We fortify that view by quoting yet another passage from the East African Court of Appeal in the matter of Iga V. Makerere University (1972) E.A 62, where it was stated that;

“The limitation Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought for and when a suit is time-barred, the court cannot grant the remedy or relief.....

The effect then is that if a suit is brought after the expiration of the period of limitation, and this is apparent from the pleadings, and no grounds of exemption are shown in the pleadings, the suit must be rejected.” (Our emphasis)

The learned Judge in this appeal, no doubt did not err when she determined whether, by operation of the law, she had to down tools for want of jurisdiction.”

18. Therefore, on this Court’s own motion, I hereby find that the suit herein is incompetently filed before this Court which is devoid of jurisdiction to hear and determine the dispute and or grant the prayers sought in the pleadings dated 5th March, 2021. The entire suit is therefore hereby struck out and the file closed.

19. The Registry to supply this decision free of charge by email to the parties or their advocates on record for noting.

20. Orders accordingly.

Dated, Signed and Delivered at Siaya this 9th Day of March, 2021

R.E. ABURILI

JUDGE