



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CIVIL APPEAL NO. 91 OF 2019

BETWEEN

AIRTEL KENYA LIMITED.....APPELLANT

AND

JACK ANGÍLA.....1ST RESPONDENT

PAUL OJIGI OMANGA.....2ND RESPONDENT

RULING

1. The 2nd respondent herein raised a preliminary objection dated 16th November, 2020 premised on the following grounds:

1. That the subject matter of the suit appealed from relates to the enjoyment and use of land.
2. That this court has no jurisdiction to entertain the appeal in the circumstances.

2. The preliminary objection was opposed on grounds that:

1. The dispute was on tort of trespass.
2. The preliminary was raised late in the day.

3. Section 13 of the Environment and Land Court Act, 2011 in respect of the Environment and Land Court, Provides:

(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other written law relating to environment and land.

(2) In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes relating to environment and land, including disputes?

(a) relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, 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, choses in action or other instruments granting any enforceable interests in land; and

(e) any other dispute relating to environment and land.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to the environment and land under Articles 42, 69 and 70 of the Constitution.

(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

4. I have been urged to make a finding that the dispute between the parties was trespass to land and that this court does not have jurisdiction. In the case of **Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd [1989] KLR 1** the court of appeal (Nyarangi JA) held as follows:

I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

5. Though the dispute is on painting of a building, this is not a land dispute. This court therefore has jurisdiction. The preliminary objection is dismissed with costs.

DELIVERED and SIGNED at HOMA BAY this 15th day of June, 2021

KIARIE WAWERU KIARIE

JUDGE