



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**HIGH COURT CIVIL APPEAL NO. 31 OF 2015**

MERCY WANJA KARIMI.....APPELLANT

VERSUS

JAMES G. KARECHE.....RESPONDENT

**RULING**

1. This appeal was pending judgment before this court, I have considered this appeal, it arises from the Judgment in the Chief Magistrate's Court at Kerugoya Civil Suit No. 286 of 2014. The appellant who was the plaintiff had filed a plaint dated 15<sup>th</sup> December, 2014 seeking an order that; ***“ the defendant do vacate land parcel number, Mutira / Kaguyu/3728 within seven days and in default he be forcefully evicted and a declaration that, the sale agreement dated 26<sup>th</sup> of March, 2008 has become void/frustrated by 3<sup>rd</sup> parties, and the defendant to collect his purchase price ( Kshs; 220,000/=) forthwith”***

2. The only other prayer was of costs and interest.

3. The defendant had filed a defence and counter claim. The appellant's claim was based on contract of sale of land, the respondents has pointed out to this court in his submissions filed by Magee Law LLP dated 20<sup>th</sup> November, 2019, that the suit relate to land and under the law only the Environment and Land Court has exclusive jurisdiction to hear such claims. He has referred this court to **Article 162 (2) (b) of The Constitution**. Which provides that:

***“Parliament shall establish courts with the status of High Court to hear and determine disputes relating to the environment, and the use and occupation of, and title to land.”***

He has also referred this court to **Section 4 of the Environment and Land Court Act**, which provides that; ***the Environment and Land court has jurisdiction to hear disputes relating to environment and land***, He has also referred the court to **Section 13 of the Environment and Land Court Act** which provides that; ***“the court has original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution and the provisions of the Act, or any other written law relating to Environment and Land.”*** The respondent therefore submits that the court lacks jurisdiction to entertain the appeal hearing, and the same should be dismissed with costs.

4. I have considered this submission **Under Section 13 (2)(a) of the Environment and Land Court Act**, it is provided that the court shall have power to hear and determine disputes relating to;

(a) ***“Environment, planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources.”*** Under the Section, the Environment and Land Court, shall exercise appellate jurisdiction, over the decisions of sub-ordinates courts, or local tribunals, in respect of matters, falling within the jurisdiction of the court.

5. The court also exercises jurisdiction in claims for compensation, Specific performance, costs among others. And having considered the claim which was before the Chief Magistrate court, I find that the court with jurisdiction is the Environment and land court which is established under Article 162 (2) (b) of the Constitution. It is trite that jurisdiction is everything, and without it the court pens off. In the case of; **OWNER OF MOTOR-VESSEL LILIAN S-VERSUS- CALTEX OIL KENYA LIMITED ( 1969) KLR 1**. The court held that:

***“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity, 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 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.”***

6. The suit before the sub-ordinate court, was based on related to a contract of sale of land. The Environment and land court is the court with jurisdiction, and this issue having been raised at this stage, I should down my tools.

7. The question is whether, I should dismiss the appeal. My view is that, since the parties have proceeded and have filed submissions, the matter should be transferred to the court with jurisdiction. Therefore, make an order that, the appellant to move the court, to transfer the appeal to the court with Jurisdiction.

I make no order as to costs.

Dated at Kerugoya this 8<sup>th</sup> day of May 2020 .

L.W. GITARI

JUDGE