



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 103 OF 2013

ANDREW KIMANI NGANGA.....1ST PLAINTIFF

MARY WACUKA KIMANI.....2ND PLAINTIFF

KAREN CENTRUM LIMITED.....3RD PLAINTIFF

VERSUS

PETER NJUGUNA NGUGI.....1ST DEFENDANT

JOSEPH WAITITU NGUGI.....2ND DEFENDANT

LINSOURCE ENTRPRISE LIMITED.....3RD DEFENDANT

THE CHIEF LAND REGISTRAR.....4TH DEFENDANT

THE PERMANENT SECRETARY MINISTRY OF LANDS.....5TH DEFENDANT

THE ATTORNEY GENERAL.....6TH DEFENDANT

RULING

The plaintiffs herein filed a suit against the defendants jointly and severally claiming special damages, general damages, exemplary damages, interest and costs, following a transaction involving a parcel of land which turned out to be non-existent. The defendants denied the plaintiffs' claim and called for proof thereof. Subsequently, the 4th to 6th defendants filed a Notice of Preliminary Objection challenging the jurisdiction of this court because under Article 162 (2) of the Constitution, this court is divested of the jurisdiction to deal with any matters relating to land. The said defendants also cited Section 13 (1) of the Environment and Land Court Act to buttress their argument.

The preliminary objection has been opposed by the plaintiffs who submitted through counsel that, what is before the court has nothing to do with land but obtaining money with no subject matter for that purpose. The counsel for the plaintiffs have also referred to a Notice of Motion filed by the 4th to 6th defendants seeking to expunge all documents filed by way of statements, which the plaintiffs used to apply for judgment against them.

The answer to the preliminary objection is to be found in the plaint itself and the provision of law cited. Article 162 (2) of the Constitution confers upon Parliament the power to establish courts with the status of the High Court to hear and determine disputes relating to,

“(b) The environment and the use and occupation of, and title to, land.”

The Constitution also mandated Parliament to determine the jurisdiction and functions of the courts contemplated in the said provisions. As a result, Parliament enacted the Environment and Land Court Act No. 19 of 2011 which set out the jurisdiction of that court.

In the plaint herein, the prayers are very clear as set out herein above. There is nowhere the plaint has raised anything relating to “**environment, use and occupation of, and title to, land**”. This cannot be assumed from submissions advanced by the defendants. The prayers set out above cannot aid the position taken by the defendants.

I note also that paragraph 11 of the defence filed by the 4th to 6th defendants admitted the jurisdiction of this court. For purposes of record, the 1st defendant did so at paragraph 10, the 2nd defendant, at paragraph 6 and the 3rd defendant, at paragraph 12 of their respective defences. It is clear at this stage that the preliminary objection cannot be sustained on the facts and the law. The same is therefore dismissed with costs to the plaintiffs.

Dated, signed and delivered at Nairobi this 4th Day of April, 2019.

A. MBOGHOLI MSAGHA

JUDGE