



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

MISC APP NO. 461 OF 2012

TRENDSSETTERS INVESTMENTS LIMITED.....PLAINTIFF/RESPONDENT

VERSUS

THE PRINCIPAL REGISTRAR OF TITLES.....1ST DEFENDANT/RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND DEFENDANT/RESPONDENT

MARGARET NYAKINYUA MURIGU.....3RD DEFENDANT/APPLICANT

MARY WANJIKU KANYOTU.....4TH DEFENDANT/APPLICANT

AND

KANGAITA COFFEE ESTATE LIMITED.....1ST INTERESTED PARTY

MARRIOT AFRICA INTERNATIONAL LIMITED.....2ND INTERESTED PARTY

RULING

1. This ruling relates to a notice of motion application dated 22nd September 2016, filed by the firms of; Harrison Kinyanjui & Company Advocates and A. M. Wahome Advocates, on behalf of the 3rd and 4th Defendants (herein the Applicants). The Applicants are seeking for orders that, they be enjoined in the suit as 3rd and 4th Defendants and upon being enjoined as such, the orders made by the Hon. Justice Mutava on the 18th July 2012 and 25th July 2012, together with the ex parte judgment entered, the consequential decree and subsequent process be forthwith vacated, and entirely set aside. That, the caveats entry as No. 2 registered as I.R. 88741 on 7th July 2010 by A.F. Atieno and entry number 3 registered as I.R. 88741 on 23rd November 2010 by C.S. Maina, on the certificate of title for all that parcel of land known as L.R. No. 1126/76, West Ruiru Township, Thika District be forthwith restored, on the register of the said property, and the costs of the application be provided for.

2. The application is based on the grounds on the face of it and the supporting affidavit dated 22nd September 2016, sworn by the 3rd Applicant on her own and on behalf of the 4th Applicant. She averred that, the orders made and referred to above, were all made without jurisdiction for reasons that the subject matter of the dispute and in particular the issue of caveats relating to the suit property is purely a land issue. The matter has no commercial nature. That the trial Judge who issued those orders was sitting as the Commercial and Admiralty Division Judge and at no time prior to or subsequent to the said date was he an Environment and Land Court Judge.

3. She further averred that since the Environment and Land Court Act, 2012 had already come into force as of 18th July 2012, when the suit was filed by dint of Article 162 (2)(b) of the Constitution of Kenya, as read with Section 13(1) of the Environment and Land Court Act, 2012, the Court had no jurisdiction to hear and determine the subject matter.

4. The Applicants averred that, they only became aware of this matter when it was alluded to in another matter, being the Environment and Land Court case No. 1528 of 2014, which relates to the suit property.

5. Further, the Plaintiffs (herein "1st Respondent") being aware of the Succession Cause No. 1239 of 2008, where the suit property is listed

as part of the deceased's estate never enjoined the estate of James Kanyotu, in which the Applicants are joint Administratrix. Therefore the notice of motion application dated 18th July 2012 and the suit herein ought to be struck out and/or dismissed with costs to the Applicants.

6. However, the 1st Respondent filed a Replying affidavit dated 12th October 2016, opposing the application and argued that, the Applicants have no authority over the suit property, in that, prior to the sale, the suit property was registered in the name of; Kangaita Coffee Estate Ltd which is a limited liability company distinct from the shareholders and/or directors.

7. It was averred that, the board of directors of the company have passed a resolution denying, having authorized the firms of; J. Harisson Kinyanjui & Company Advocates and A.M. Wahome & Company Advocates, to file the suit; High Court Environment and Land Court Case No. 1528 of 2014, in regard to the suit property. That, the same was subsequently, withdrawn on 11th October 2016, with no orders as to costs. Therefore, as the suit property belongs to Kangaita Coffee Estate Limited and not the deceased, the Applicants recourse lie in a claim over shares held by the deceased in the company and not the suit property.

8. Further, the application is defective, in that, there are joint Administratrix of the estate of the deceased namely; the Applicants, and one Jane Gathoni Kanyotu, yet Jane is not a party to the application. Further, the 3rd Applicant has no authority to make the application on behalf of the 4th Applicant, as the 4th Applicant is not incapacitated for the application to be made on her behalf. That, an application for joinder should be made personally. Even then, the Applicants should have first sought to be enjoined as substantive parties to the suit, before seeking for any orders therein, therefore application cannot be allowed as prayed.

9. The 1st Respondent averred that, the 4th Applicant received Kshs. 65,160,804.00 of the purchase price of the suit property; therefore, she is estopped by operation of law from making the application herein. Further the Applicants cannot approbate and reprobate by impugning the jurisdiction of the court and at the same time seek for orders from the same court.

10. It was averred that, prior to 8th May 2015, and the decision in the matter of; Malindi Criminal Appeals Nos. 44, 45 and 76 of 2014; any Judge could hear and determine land matters. Even then, the court cannot grant the orders sought as it will be tantamount to sitting on its own appeal. Therefore the Applicants should appeal against the impugned orders, if aggrieved.

11. The 1st Respondent argued that, it is perjury for the Applicants' to aver that, they became aware of this matter on 21st September 2016, in that, the 3rd Applicant deposed in an affidavit dated 22nd September 2016, at paragraph 4 and 5 that she had knowledge of this matter. Hence the Applicants intend to obtain unmerited orders and/or orders which they were unable to get, in the Environment and Land Court Case No. 1528 of 2014. The grant of the orders sought will result in a serious miscarriage of justice and substantial and irreparable loss to the 1st Respondent.

12. The 1st Respondent filed a notice of preliminary objection dated 26th September 2016, in addition to the Replying Affidavit, basically reiterating the averments in the affidavit in reply, that suit property belongs to a legal entity distinct from the estate of the deceased and therefore the Applicants lack locus standi in this suit and for joinder.

13. Further, the suit property and allegations made in the impugned notice of motion application, are substantially and directly in issue in the Succession Cause No. 1239 of 2008 and High Court Environment and Land Court Case No. 1528 of 2014; and in so far as the subject matter relates to; interest in land, the application and the entire suit should be transferred to the Environment and Land Court Division of the High Court.

14. Be that as it were, the prayer seeking for joinder of the applicants as 3rd and 4th Defendants was allowed by consent of the parties on 17th October 2016. Therefore it is spent and the arguments advanced by the 1st Respondent that, the Applicants should have first sought for joinder before seeking for the other prayers has been overtaken.

15. However, before the subject application was heard and determined, the matter took a different angle altogether with the parties filing several applications seeking for inter alia, joinder of other parties.

16. The firm of; Muriu, Mungai & Company Advocates filed a notice of motion dated 14th October 2016, for joinder of Kangaita Coffee Estate Limited. The application was supported by an affidavit sworn by John K. Kanyotu dated 14th October 2016. The main reason advanced in support of the application was that the company was a party to a transaction of the sale of the suit property to the 1st Respondent. The transaction was completed and consideration settled, therefore any adverse orders made are likely affect the company.

17. The second application for joinder was filed by the firm of; Odhiambo M.T Adala Advocates vide a notice of motion application dated 5th December 2016, for joinder of; Marriot Africa International Ltd, as the 2nd interested party. It was supported by an affidavit of same date, sworn by Sankay Kishorkumar Mashru, He deposed that the suit property was transferred to the 2nd interested party, pursuant to the sale agreement dated 21st August 2014, and therefore the Plaintiff has no proprietary or beneficial interest in the suit property. As such, any order issued in this matter will affect the 2nd interested party.

18. It suffices to note that, before the court could hear and determine the application dated 22nd September 2016, a consent order was recorded in court on 18th January 2017, between the Plaintiff/1st Respondent represented by the firm of; Odhiambo M.T. Adala & Co. Advocates and the 4th Defendant/Applicant represented by the firm of Maina Nyagena & Co, Advocates, whereby the 4th Applicant irrevocably withdrew from the suit and the application dated 22nd September, 2016, together with all the pleadings against the Plaintiff.

19. However, the 4th Applicant filed an Affidavit dated 20th January 2017, and denied having given the firm of; Maina Nyagena & Co,

Advocates instructions to withdraw from the suit or withdraw the subject application. She also denied withdrawing instructions from the firm of; H Kinyanjui & Co. Advocates and appointing Maina Nyagena & Co, Advocates. She deposed that she never appeared before one Wilson Gathoto who allegedly commissioned the affidavit to support the consent. Neither did she meet Mr Nyagena on 29th December, 2016 as he was out of Nairobi. Basically the 4th Applicant averred that the alleged consent was based or was founded on a forgery of her signature or was a fraudulent transaction.

20. The court considered the matter after hearing all the parties and referred it to the Directorate of Criminal Investigations to deal. A report therefrom was received on 16th July 2018, indicating that the questioned signatures, the specimen signatures and the known signatures “were made by the same author” The matter was left to rest there for the purpose of the issues herein.

21. To revert back to the main issues herein, the two applications filed by the intended interested parties were allowed by the consents of the parties. After the joinder one John K. Kanyotu swore a Replying affidavit dated 8th November 2016, in response to the notice of motion application dated 22nd September 2016. The 2nd interested party, appointed the firm of; Nyihia Mukoma & Co. Advocates to represent it and filed a Replying affidavit dated 26th January 2016, sworn by Abdul Dawood Hassan, in opposition to the application dated 22nd September 2016.

22. In a nutshell, Mr Hassan deposed that the title documents to the suit property was surrendered to the government (as evidenced by the instrument of surrender produced), for sub-division of the suit property therefore the property described as L.R.No. 11261/76 does not exist. That even then, what was before Justice Honourable Mutava were orders issued in the Family Division and therefore was not a matter in the Environment and Land Court Division, and even if it was, then this court has no jurisdiction and/or the court is functus officio following the filing of the notice of withdrawal referred to herein by the 4th Applicant.

23. Be that as it may, the 1st Respondent filed a supplementary affidavit sworn by Sankay K Mashru dated 10th March, 2017, and averred that the 4th Applicant having signed the Sale agreement that passed the property to Plaintiff as supported by the affidavit of John Kanyotu dated 24th March, 2014, filed in the Succession cause referred to herein, she has no capacity to file the application dated 22nd September 2016.

24. However, in a supplementary affidavit sworn by the 3rd Defendant/Applicant dated 13th December 2016, in response to the affidavits dated 2nd October and 5th December, 2016 sworn by Mr Sankay K Mashru. She termed Mr Mashru as an imposter, who has no authority to swear any affidavit and that only Mr. Aman Vyas has authority to do so.

25. She further attacked the purported sale of the land to the Plaintiff on the ground that no Land Control Board consent was obtained and that the entire property could not have been sold as the purported sale refers to part of the property. Finally the property was valued to Kshs 2,672,000,000 in the year 2014 and could not be sold for Khs 700,000.

26. Be that as it were, the parties continued to file applications and on 7th February 2017, the firm of; Odhiambo M.T. Adala & Co. Advocates filed a notice of motion application of even date, seeking for orders that, the proceedings herein relating to the 3rd and 4th Defendants/Applicants be stayed, on the grounds that, the application has been withdrawn. In that regard, Mr. Ogoti Nyangena filed an affidavit in court dated 8th February 2017, to support the withdrawal consent order by his client the 4th Defendant/Applicant.

27. In the meantime, the 3rd and 4th Defendants/Applicants filed an application dated 18th February 2017 seeking for leave to amend the notice of motion application dated 22nd September 2016, to inter alia correct the description of the suit property to read L.R No. 11261/76 instead of L.R No. 1126/76 and to introduce 39 new parties and a counter-claim against the Plaintiff/1st Respondent

28. The parties continued to file affidavits and John Kanyotu filed a supplementary Affidavit on 24th February 2017, maintaining that the 4th Defendant who is his biological mother signed the various documents relating to the sale of land to the Plaintiff and that she is being misled by the members in particular one, Willy Kihara of the church where she fellowships.

29. On the 23rd March 2017, the firm of; Odhiambo M.T Adala & Co. Advocates filed another notice of motion application dated 22nd March 2017, seeking that, the notice of motion application dated 22nd September 2016, and the Supporting Affidavits thereto, be struck out and the same fate fall on the notice of motion application dated 18th February 2017 and the supporting affidavits, on the grounds that the 3rd and 4th Defendants/Applicants have not filed a statement of defence and seeks to introduce new orders as evidenced by the draft amended application. However the 3rd and 4th Defendants/Applicants filed grounds of opposition terming the application as incompetent and an abuse of the court process.

30. The last notable document filed is an Affidavit dated 12th June, 2018 sworn by the 4th Defendant/Applicant who describes herself as a director of 1st interested party. She deposed that, she has no claim or complaint against the Plaintiff/1st Respondent or the 1st interest party with regard to the sale or purchase of the suit property being L.R.No. 11261/76. She then sought to categorically and irrevocably withdraw as the 4th Defendant/Applicant from the suit and the application dated 22nd September 2016. However the learned counsel Mr Harrison Kinyanjui Advocate appearing for her told the court that he was not aware of the subject affidavit and that, his clients were being threatened by the Plaintiff/1st Respondent and the 2nd interested party. The claims were denied by the counsels representing them.

31. It is also noteworthy that when the subject application was filed the 4th Defendant/Applicant had instructed Paula Atukunda Advocate to represent amid protest that her appearance was unprocedural as the previous law firm was still on record.

32. Therefore, from the above facts, after filing of the notice of motion application dated 22nd September 2016, at least five other

applications have been filed. But in my considered opinion the determination of the initial application dated 22nd September 2016, will deal with the main issues that have arisen and the other application.

33. In that regard, the issues to determine are inter alia:-

- a. whether there is a competent application in view of the affidavit filed by the 4th Defendant/Applicant withdrawing from the suit and the subject application;
- b. whether in the first place the 3rd and 4th Applicants have the locus standi to file the Application in view of the fact that the suit property was registered in the name of a limited liability company before the alleged sale;
- c. whether the court has the jurisdiction to hear and determine the Application and/or whether the court is functus officio; and
- d. whether the court can grant the orders in the amended Application as prayed?

34. I have considered these issues and find that before the court can deal with them, the first issue to consider is whether the court has jurisdiction to entertain the matter and in particular the subject application. In that regard, I have considered all the arguments advanced by the parties alongside their respective submission on the issue. The 3rd and 4th Defendants/Applicants filed their submissions on this issue on 28th March 2017, and led the court through the constitutional provisions relating to the same and the objects of the Environment and Land Court Act No. 19 of 2011. It was argued that by dint of Section 24 of the Act, Parliament conferred on the Hon. the Chief Justice jurisdiction to make Rules to regulate the practice and procedure of the matters related to land and environment.

35. That the Hon. the Chief Justice, pursuant to this power, accepted a "Practice Direction on proceedings relating to environment and use and occupation of, and title to land" vide Gazette Notice No. 16268 of 9th November 2012. However it was superseded by the Gazette Notice No 5178 of 25th July 2014. Direction 5 thereof; prohibited the courts that were not empowered to hear and determine the matters relating to land, from hearing fresh matters related to the same and especially in view of the fact that, Environment and Land Court Act No. 19 of 2011, had come into effect on 30th August 2011, although the Gazette Notice "significantly did address the setting aside of orders or judgment of a matter dealing with hitherto dealt with a non-Environment and Land Court such as facing the court".

36. That the 3rd and 4th Defendants are not seeking for a fresh hearing and to drive the Applicants out of the seat of justice due lack of these explicit Practice and Direction would otherwise be to gravely misconstrue Article 159(2)(d) of the Constitution. Therefore, the proceedings herein be set aside and the matter be transferred to the Environment and Land Court.

37. However, the Plaintiffs submitted vide submissions filed on 28th March 2017, that the matter herein is a subject of land and should be determined by Environment and Land Court. The case of; *Okelo and Another vs Onsonga Civil Appeal No. 165 of 1986*, was cited where the court held that "a judge of High Court cannot set aside the decision of another judge of equal jurisdiction, whether on appeal or at first instance and the only such power is if an application for review is made". It was submitted that if this court were to find that it has jurisdiction then it would embark on an exercise in futility as the subject property has changed hands and character after sub division thereof. Therefore, the court should strike out the 3rd and 4th applications *in limine* for lack of jurisdiction *ex debito justitiae*.

38. The 1st interested party filed its submissions on the issue of jurisdiction on 4th April, 2017 and referred the court to the provisions of Article 162(2) of the Constitution and Section 4 of the Environment and Land Court Act No. 19 of 2011. The court was then referred to the case of; *Daniel N Mugendi vs Kenyatta University & 3 others Civil Appeal No. 9 of 2012* where the court held that in any event a High Court Division seized of matter finds that it should be heard in another division it should transfer it to that court for hearing and determination. Therefore, this court should transfer this matter accordingly due to lack of jurisdiction.

39. Finally, the second interested party through the submissions filed on 8th December 2018, submitted that, the court has no jurisdiction to deal with this matter and specifically the application dated 18th February 2017. The court was referred to the provision of Section 13 of the Environment and Land Court Act No. 19 of 2011 to argue that only the Environment and Land court can set aside a regular or irregular order. Further reference was made to the case of; *The owners of the motor vehicle vessels (supra)*.

40. It is clear from the submissions by the respective parties that, this matter rests on the issue of jurisdiction as to which court between the Commercial Admiralty & Tax Division and the Environment and Land Court Division of the High Court should hear and determine it. The primary jurisdiction of the courts is established by the Constitution of Kenya, 2010 (herein "the Constitution"). In particular Article 159 (1) of the Constitution provides that:-

" (1) Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.

41. The two subject courts herein are superior courts and in relation to the same Article 162 (1)and (2) of the Constitution provides states that:-

1. "The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2)
2. Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-

- a. employment and labour relations; and
- b. The environment and the use and occupation of, and title to, land.

42. Article 165 (3) and (5) of the Constitution provide for the jurisdiction of the High Court as follows:-

“Subject to clause (5), the High Court shall have—

- a. unlimited original jurisdiction in criminal and civil matters;
- b. jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
- c. jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
- d. jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
 - i. the question whether any law is inconsistent with or in contravention of this Constitution;
 - ii. the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - iii. any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - iv. a question relating to conflict of laws under Article 191; and any other jurisdiction, original or appellate, conferred on it by legislation.

43. Article 165(5) of the Constitution restricts the jurisdiction of the High Court as follows:-

“(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).

44. As regards the jurisdiction of the Environment and Land Court, Section 13 of the Environment and Land Court Act provides as follows:

“ 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 law applicable in Kenya 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-

- a) relating to environmental planning and protection, 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 interest 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 a clean and health environment 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

5) Deleted by Act No. 12 of 2012

6) Deleted by Act No. 12 of 2012

7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including-

a) interim or permanent preservation orders including injunctions;

b) prerogative orders;

c) award of damages;

d) compensation;

e) specific performance;

f) restitution; or

g) declaration; or

h) costs

45 Finally Section 150 of the Land Act, 2012 stipulates that:-

“The Environment and Land Court established in the Environment and Land Court Act and the subordinate Courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act”

46. Similarly, the case the law on jurisdiction is settled that jurisdiction is everything. The locus standis on jurisdiction is the celebrated case of; *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR* where Justice Nyarangi of the Court of Appeal (as he then was) stated that:-

“ 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.’

47. The holding in the above case was based on the write up by John Beecroft Saunders, in *Words and Phrases Legally defined – Volume 3: I – N* at page 113 states that:-

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.

48. To revert back to the matters herein, the parties are in agreement that the subject matter of this suit is land and in particular relates to the alleged sale of L.R. No. 11261/76 by the 1st interested party to the Plaintiff/1st Respondent and/or the caveats registered against it and subsequently vacated and/or removed. In my considered opinion this is un-disputably a matter within the jurisdiction of the Environment and Land Court.

49. The question that arises is, if the trial judge that heard this matter and issued the subject impugned orders had no jurisdiction, being a judge within the Commercial and Tax Division, does this court sitting in the same division with concurrent jurisdiction have the jurisdiction to hear the subject application and grant any substantive orders and/or the orders sought for therein?

50. In this regard, it is noteworthy that, the Applicants in the application dated 22nd September 2016, are seeking that the impugned orders together with ex parte judgment entered herein be set aside and the entries number 2 and 3 in relation to the suit property removed from the register be restored. Further, through the notice of motion dated 18th February 2017, they seek that, the purported sub division of the suit property be cancelled, the 39 parties to the purported subdivision be enjoined in the suit as co-plaintiffs or co-defendants as the court may direct. That pending the hearing and determination of the motion, these parties so enjoined and/or their agents, servants, advocates or otherwise be restrained from charging, dealing in, pledging, selling by public auction, private treaty or otherwise howsoever dealing in the

said subdivision of the suit property.

51. These raft of orders sought for in the two applications in no doubt substantive and the question remains; does this court have jurisdiction to grant the same. Even then, it is to be appreciated that, there is indeed a judgment in this matter issued albeit ex parte, that has not been set aside. What then would be the effect of setting the judgment aside? In my considered opinion, it means that this court will restore the caveats removed by the impugned orders and ex parte judgment. That will definitely attract a similar application as to whether this court can preside over a matter relating to use, occupation of and/or title to land, when there is an established Environment and Land Court. As appreciated by the Applicants, the Practice Directions issued by the Honourable the Chief Justice do not address the issue of setting aside the orders as herein.

52. Further, the parties are in agreement that this matter should be heard in the Environment and Land Court. I entirely concur and I think the parties should have purposed to refer the matters accordingly by consent. In the ruling this court delivered herein on 13th July 2017, the court observed inter alia as follows:-

“However I am rather surprised that the Parties herein including the Plaintiff/Applicant, have continued to file several Applications and length responses in form of Supporting and Replying Affidavits despite the fact that one of the ground in the preliminary objection is that the Court has no jurisdiction to entertain this matter. In fact, there are so many Applications filed after the one by the 3rd and 4th Defendants that, the Court can hardly appreciate what the exact issue herein is. The initial Notice of Motion Application dated 22nd September 2016, seems to have opened the flood gate of Applications, whereupon other Parties have been joined in this matter, and numerous Applications filed as aforesaid to either to stay the proceeding, amend the existing ones, or strike out Affidavits. I think the Court should not be dragged into the circus of the parties filing numerous Applications instead of focusing on the real substantive issues”.

53. To conclude this matter, I find and hold that all the issues raised herein relate to matters within the jurisdiction of the Environment and Land Court. If the parties are in agreement, the matter should be transferred to that court. In the meantime, I find that this court has no jurisdiction to issue the orders sought for. The same can only be considered in the court with jurisdiction and/or the Court of Appeal if the Applicants deem appropriate to appeal against the impugned orders. Therefore, I shall not delve into the merits of the applications. Once the court finds it has no jurisdiction, it downs the tool of Trade because jurisdiction is everything.

54. In view of the various applications herein and taking into account they were having been filed by almost all the parties, an order as to costs in favour of any party as against the other, will not serve the interest of justice. The costs shall abide the outcome of the final orders on the applications

55. It is so ordered

Dated and signed on this 16th day of May 2019, in an open court at Nairobi.

G.L NZIOKA

JUDGE

Delivered by Hon Lady Justice W Okwany on this 16th day of May 2019.

In the presence of:-

Mr. Adala for the Plaintiff

No appearance for the 1st and 2nd Defendants

Ms. Akedi for 3rd and 4th Defendants

Ms. Paula Atukunda for the 4th Defendant

DennisCourt Assistant