



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL APPEAL NO. 118 OF 2018

JULIUS KATHURIMA KITHAMBA.....APPELLANT

Versus

JULIUS MWONGERA.....RESPONDENT

(Being an appeal from the judgement/decree and Orders of Hon. Miss H. Ndungu

Chief Magistrate Meru in Cmcc No. 17 of 2012 delivered on 26/10/2018)

JUDGMENT

1. The appellant was the plaintiff in the trial Court whereas the Respondent was the Defendant. The Appellant sued the Respondent for:-

a) An Order of eviction of the defendant and a permanent injunction against the defendant his family or agents and restrain them from interfering or using the plaintiff's parcel of land No. L.r.Ruiru/Rwarera/1419.

2. The particulars of the case were that the Respondent without any colour of right or lawful justification invaded the plaintiff's parcel of Land No. Ruiru/Rwarera/1419 and has since been destroying trees and leasing the said parcel of land to other people unknown to the appellant.

3. The Respondent filed its defence and counterclaim and therein sought a declaration that he is the beneficial owner of L.r. Ruiru/Rwarera/1419 and an Order that the Appellant be compelled to transfer L.r. Ruiru/Rwarera/1419 to him and in the alternative a declaration that he is entitled to $\frac{3}{4}$ an acre of L.R. Nyaki/Mulathankari/494 which is the parent land parcel to L.r. Nos. Nyaki/Mulathankari/3078 and 3079 and costs of this suit plus interest.

4. The trial Magistrate dismissed the appellant's suit and allowed the counterclaim hence necessitating this appeal. Following directions by the court, parties canvassed the appeal through written submissions.

Jurisdiction

5. The more I peruse the submissions and pleadings of the parties, the more echoes bounce back that this court lacks jurisdiction to deal with the appeal. I am not oblivious that Nyarangi JA in the *locus classicus*; **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd. (1989)** pronounced:

"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 its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."

6. The Constitution of Kenya, 2010 ushered in a complete paradigm on jurisdiction of disputes relating to the environment and the use and occupation of, and title to, land. It provides for establishment of a superior court quite separate from but of the status of the High Court to deal with such disputes on the use and occupation of, and title to, land. And, under article 165(5) (b) of the Constitution it is expressly stated that the High Court does not have jurisdiction on matters falling within the jurisdiction of courts established under article 162(2) of the ELC. The courts were accordingly established a Environment and Land Court (herein ELC). See article 162(2) and the Environment and Land Act.

7. For emphasis, I will cite section 13 of the Environment and Land Court Act which sets out the jurisdiction of the ELC as follows:

“13 Jurisdiction of the Court

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.....”

8. From the provisions of **Section 13 of the Environment and Land Court Act** it is clear the cause of action herein falls squarely within the jurisdiction of ELC. Accordingly, this appeal falls within the jurisdiction of the Environment and Land Court. I say this fully cognizant that transition to ELC is now over as ELC is fully established and operating and it would be wrong to assume jurisdiction over this appeal in the circumstances. This Court is therefore called upon to place the matter where it belongs for hearing and disposal. Accordingly, I direct that this file be transmitted to the Environment and Land Court for hearing and determination. It is so ordered.

9. It is so ordered.

Dated signed and delivered in open court at Meru this 16th day of December, 2019

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F.M GIKONYO

JUDGE

In presence of

Muthamia for appellant

M/S Muriithi for respondent

Appellant – present

Respondent – present

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F.M GIKONYO

JUDGE