



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 1170 OF 2006**

FRANCIS MUTHUSI KIMINZA & 18 OTHERS ..... PLAINTIFFS

VERSUS

AMBOSELI COURT LIMITED ..... DEFENDANTS

**RULING**

The plaintiffs entered into a sale agreement with the defendant for the purchase of residential premises set out in the plaint. The defendant has raised a Notice of Preliminary Objection to the plaintiff's suit dated 11<sup>th</sup> August, 2011 on the grounds that the suit as drawn is incapable of invoking the court's jurisdiction on account of the provisions of Articles 162 (2) and 165 (5) of the Constitution of Kenya 2010 and Section 13 of the Environment and Land Court Act. Cap 12 A.

The parties herein have filed submissions limited to the said Notice of Preliminary Objection. The only issue to address is whether of not this is purely a land matter or a civil contract. This can be determined by reading the pleadings and prayers set out therein. Looking at the amended plaint dated 15<sup>th</sup> July, 2010, and the prayers sought by the plaintiffs, it is clear that all relate to contract of sale leading to title.

As at the date of the filing of the said amended plaint, the Constitution had not been promulgated. However, the suit is still pending hearing and therefore the provisions cited are relevant. Article 165 (5) of the Constitution provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162 (2) of the Constitution. Article 162 (2) (b) aforesaid of the Constitution mandates Parliament to establish a court with a status of the High Court to hear and determine disputes relating to the environment and the use and occupation of and title to land.

Among the orders sought by the plaintiffs in the amended plaint aforesaid, is an order for specific performance directed to the defendant to effect transfer to the plaintiffs in respect of the plots sold to them. Notwithstanding the other prayers in the plaint, the title to land takes the centre stage. In that case therefore, this court is divested of that jurisdiction. I am fortified in that finding by the contents of the case summary dated 16<sup>th</sup> April, 2014 and filed in court on 17<sup>th</sup> February, 2014 by the plaintiff.

I am persuaded to find, which I hereby do, that this court has no jurisdiction to hear this matter which I now order to be transferred to the Environment and Land Division for hearing and disposal. Costs in the cause.

***Dated, signed and delivered at Nairobi this 7<sup>th</sup> Day of June, 2016.***

**A. MBOGHOLI MSAGHA**

**JUDGE**