



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**PETITION NO.15 OF 2017**

**IN THE MATTER OF THE CONSTITUTION OF KENYA, ENFORCEMENT AND INTERPRETATION OF THE  
CONSTITUTION RULES 2013**

**AND**

**IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS**

**AND**

**IN THE MATTER OF ARTICLES 1, 10, 22, 23, 47, 49, 73, 157 AND 265 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF ADMINISTRATION ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF THE HIGH COURT (ORGANIZATION AND ADMINISTRATION ACT NO. 27 OF LAWS OF KENYA**

**AND**

**IN THE MATTER OF LEGITIMATE EXPECTATION**

**AND**

**ABUDULKADIR SAYYED AHMED.....PETITIONER/APPLICANT**

**VERSUS**

**OFFICE OF THE COUNTY CRIMINAL INVESTIGATION (CCIO)**

**THE DIRECTORATE OF CRIMINAL INVESTIGATIONS-LAMU**

**PRINCIPAL MAGISTRATE'S COURT LAMU**

**THE HONOURABLE THE ATTORNEY GENERAL.....RESPONDENTS**

**AND**

**OMAR SALIM NASSIR SULEIMAN alias BAGDAM.....INTERESTED PARTY**

**RULING**

1. On 27<sup>th</sup> July 2017, Abdulkadir Sayyed Ahmed filed this Petition against the Office of the County Criminal Investigation (1<sup>st</sup> Respondent), the Directorate of Criminal Investigations (2<sup>nd</sup> Respondent), the Principal Magistrates Court Lamu (3<sup>rd</sup> Respondent) as well as the

Honourable the Attorney General (4<sup>th</sup> Respondent). Omar Sahim Nassir Suleiman alias Bagdam is named in the Petition as the Interested Party.

2. The Petition expressed to be filed pursuant to Articles 22, 23 and 165(3) of the Constitution prays for:-

i) *A declaration that the Petitioner's fundamental rights and freedoms as enshrined under Articles 29, 35, 47, 49 (and) 50 of the Constitution of Kenya 2010 have been infringed upon by the Interested Party on making and lodging allegations at the office of the 1<sup>st</sup> Respondent that the Petitioner has trespassed and intruded on an alleged parcel of land and by the 1<sup>st</sup> Respondent in investigating and intending to arraign the Petitioner in Court and charge him over his own property (sic) jointly owned by other shareholders namely Islam Ali, Yuster Kitawa and Samuel Charo Kazungu as tenants in common and/or equal shares for a period of ninety nine (99) years from the year 2000 up to 2009;*

ii) *A declaration that the Petitioner herein is a joint Lessee with other shareholders namely Islam Ali, Yuster Kitawa and Samuel Charo Kazungu of all that parcel of land known as No. CR 54824 situated in Hindi Division within Lamu County measuring an approximate area of 400 Hectares;*

iii) *An order that the Interested Party be condemned to pay the Petitioner damages; and;*

iv) *Costs of the Petition*

3. Filed together with the Petition on the same day is a Notice of Motion application dated the same day seeking conservatory orders to be issued to restrain the Respondents and the Interested Party from summoning, investigating, arresting, detaining, arraigning and/or charging the Petitioner before the 3<sup>rd</sup> Respondent on account of issues relating to the disputed parcel of land.

4. Upon being served with the Petition and the said application, the Interested Party moved to Court and filed a Preliminary Objection dated 29<sup>th</sup> November 2017 raising a Preliminary Objection in limine to the Petition on the grounds that:-

1. *The Honourable Court does not have the jurisdiction to grant the orders sought in the Notice of Motion dated 27<sup>th</sup> July 2017 and in the Petition dated 27<sup>th</sup> July 2017;*

2. *The Honourable Court has no jurisdiction to grant any orders under Article 23(1) (2) (3) as read together with Article 159 of the Constitution; and*

3. *There is nothing on the record to demonstrate an abuse of any powers under Articles 40, 50 and 157 of the Constitution.*

5. On 26<sup>th</sup> February 2018 when the parties appeared before me, directions were taken that the objection be heard first and both the Interested Party and the Petitioner filed their submissions and authorities in regard thereto. I have considered the objection and the submissions filed by the Learned Advocates for the parties. I have also considered the authorities supplied by the Learned Advocates.

6. As was stated by the Court of Appeal in *the Owners of the Motor Vessel "Lillian S" –vs- Caltex Oil(Kenya) Ltd (1889) 1KLR:-*

***"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.***

7. As submitted by Mr. Ole Kina, Learned Counsel for the Interested Party, the Petition is seeking among other prayers a declaration that the Petitioner's fundamental rights and freedoms as enshrined under Articles 29, 35, 47, 49 and 50 of the Constitution have been contravened and infringed upon. It was therefore Counsel's submissions that this Court is not vested with the powers to grant such orders as the same does not fall within its powers under Section 13 of the Environment and Land Court Act. Such jurisdiction according to the Interested Party is reserved for the High Court and this Court cannot sit over the same.

8. As it were, the Environment and Land Court Act No. 19 of 2011 was enacted to give effect to Article 162(2) (b) of the Constitution which Article made provision for the establishment by Parliament of a Court to hear and determine disputes relating to the environment, use and occupation of, and title to land. The Environment and Land Court Act under Section 13 makes provision for jurisdiction of the Court as established under Section 4 thereof. Under Section 13(2), the Court has power to hear and determine disputes relating to environment and land, including disputes:-

a) *Relating to environmental planning and protection, trace climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, mineral 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 interests in land; and*

e) *Any other dispute relating to environment and land.*

9. Section 13(3) of the Environment and Land Court Act provides thus:-

***(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 freedoms relating to the environment and land under Articles 42, 69 and 70 of the Constitution.***

10. In addition Section 13(7) of the Act provides that in the exercise of its jurisdiction under the Environment and Land Court 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;*

g) *Declaration; or*

h) *Costs*

11. Having regard to the Constitutional provisions under Article 165(5) (b) and Section 13 (3) of the Environment and Land Court Act, it is my view that this Court has jurisdiction to deal with violations and/or infringements of fundamental rights and freedoms in so far as the same relate to the environment and land.

12. While it is true, as submitted by the Interested Party's Counsel that under Section 13(3) of the Environment and Land Court Act, the Court has the mandate to hear and determine applications for redress of a denial, violation or infringement of, or threat to rights or fundamental freedoms relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution, the Act does not limit, or preclude the Court from hearing applications for redress of a denial or violation of any other right if that right is in furtherance of a dispute relating to land and the environment.

13. The Petition before me is certainly bereft of clarity and precision. It appears to me to have been drafted in a hurry and without much thought. Be that as it may, I hear the Petitioner to be stating that he is a joint lessee of the suit property together with three other individuals. He has annexed in support of this contention a Certificate of Title (Annexure 45A) evidencing his interest in the land. It is his case that the Interested Party is using the Respondents to lay a claim to the suit property and to have his title cancelled. That must be the reason under prayer 'b' of the Petition, he is seeking a declaration that he is a joint lessee with the other shareholders of the suit property.

14. I did not hear the Interested Party say that the said Prayer No. 'b' of the Petition is also a matter that falls outside the jurisdiction of this Court. A Preliminary Objection as it were must be capable of disposing of the entire matter. It ought not to be raised if any fact still requires to be ascertained by the Court.

15. In the circumstances herein, I did not find merit in the Preliminary Objection dated 29<sup>th</sup> November 2017 and filed herein on 30<sup>th</sup> November 2017. The same is dismissed with costs to the Petitioner.

**Dated, signed and delivered at Malindi this 18<sup>th</sup> day of January, 2019.**

**J.O. OLOLA**

**JUDGE**