



REPUBLIC OF KENYA



KENYA LAW
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Riungu v Ndambithe (Chairman Kibacha Water Project) & another (Environment & Land Case 7 of 2021) [2024] KEMC 98 (KLR) (28 June 2024) (Judgment)

Neutral citation: [2024] KEMC 98 (KLR)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
ENVIRONMENT & LAND CASE 7 OF 2021
AT SITATI, SPM
JUNE 28, 2024**

BETWEEN

DORIS MUTHONI RIUNGU PLAINTIFF

AND

GIKUNDA NDAMBITHE (CHAIRMAN KIBACHA WATER PROJECT) 1ST DEFENDANT

CHARLES NTHURIMA (SECRETARY KIBACHA WATER PROJECT) 2ND DEFENDANT

JUDGMENT

1. By a plaint dated 12th February, 2021 verified by an affidavit of similar date, the plaintiff prayed for:
 - A. An order of mandatory injunction compelling the defendant to reconnect the water on plaintiff's L.R. No Abothuguchi/L-Kaongo/870.
 - B. Costs of the suit
2. Accompanying the plain were: Witness statement of the plaintiff List of documents containing 3 documents – lease agreement, demand notice and project-by-laws Further list of witnesses containing the statement of Bennis Muthoni and Paul Gichari.
3. The firm of Kimathi Kiara & Company represented the plaintiff while the defendant was represented by Kithinji Kirigiah & Company Advocates.

The Defendant's Case

4. The suit was opposed by a Statement of Defence dated 29th January, 2024. Accompanying the defence were: List and bundle of 3 witnesses' statements of Gikunda Ndambithe and Charles Nthurima List



and bundle of documents containing 3 exhibits- By-laws, letter of 29th October, 2020 and receipt dated 27th February, 2021

5. A preliminary objection challenging the jurisdiction of the court was also filed but was not canvassed substantively. The objection was that the dispute was properly the province of the Water Regulatory Authority under sections 119 and 121 of the *Water Act* (2016). It behoves the court to consider this preliminary objection before going into the merits of the case.

Issue for Determination: Jurisdiction

6. The only issue to be determined is whether or not this trial court had the necessary jurisdiction to entertain the suit and make the related orders.

Determination

7. Jurisdiction is everything and without it the court cannot make even one step. This was the principle stated by the Court of Appeal in the case of Owners of Motor Vessel Lilian “S” –vs- Caltex Oil (K) Ltd (1989)eKLR (Nyarangi, Masime & Kwach JJ.A) where the learned Judges had this to say:

With that I return to the issue of jurisdiction and to the words of Section 20 (2) (m) of the 1981 Act. 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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

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 judgement is given” See Words and Phrases Legally defined – Volume 3: I – N Page 113

It is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence before the court. A party who fails to question the



jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined.

I can see no grounds why a question of jurisdiction could not be raised during the proceedings. As soon as that is done, the court should hear and dispose of that issue without further ado.”

8. Section 119 and 121 of the Water Act 2016 provide that:

119. Establishment of the tribunal

(1). There is established the Water Tribunal.

The related section is 121:

Jurisdiction of the Tribunal

1. The Tribunal shall exercise the powers and functions set out in this Act and in particular shall hear and determine appeals at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or of any person acting under the authority of the Cabinet Secretary, the Authority and Regulatory Board.
2. In addition to the powers set out in subsection (1), the Tribunal shall have the power to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative dispute resolution mechanism.

9. From the material placed before the court, it is noted that the dispute was about access to and utilization of water resources within the meaning of the Water Act, 2016. Therefore, the jurisdiction to determine this dispute fell squarely upon the Water Tribunal. Therefore, this trial court lacked the necessary jurisdiction to entertain this suit. In the result, the court uphold the preliminary objection as merited and dismisses the suit as having been filed in the wrong forum. Costs to the defendants. Right of appeal is 30 days.

DATED, READ AND SIGNED AT GITHONGO LAW COURTS THIS 28TH DAY OF JUNE, 2024

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HON. T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

GITHONGO LAW COURTS

Plaintiff Present

Both Defendants

Mr. Kithinji Kirigiah Adv I am for the Defendant

