



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC APPEAL NO. 1 OF 2017

FORMERLY NAKURU HCA NO. 54 OF 2016

RICHARD K. LANGAT & 38 OTHERS.....APPELLANTS

-VERSUS-

RUKUTI OLE KORIATA & 4 OTHERS.....RESPONDENTS

JUDGEMENT

By a Notice of Preliminary Objection on points of law dated 2nd September, 2014 the learned Senior Resident Magistrate Narok had found that he lacked the requisite jurisdiction to compel the Land Registrar and the Surveyor Narok to give relevant approvals and Register the appellants as the owners of LR CIS MARA/OLOLOLUNGA/156.

The appellants filed an appeal following the aforesaid findings by the lower court and raised the following grounds: -

1. That the learned Magistrate acted ultra vires in varying the decision of the land dispute tribunal and failed to uphold the decision of the said tribunal.
2. That the Magistrate's disregard to the submissions of Appellants.
3. That the Magistrate erred in finding he lacked jurisdiction.

The Respondents had opposed the said appeal by way of a replying affidavit Wherein they stated that they are not the registered owners of land parcel CIS MARA/OLOLOLUNGA/156.

The Respondents have stated that the Magistrate did not err in his findings and thus as he found that the decree issued was fully complied with and the only way they could enforce is by way of a Judicial Review which could give effect to the decree.

The Respondents further stated that 2nd, 3rd and 4th Respondents are all deceased and no efforts were taken to substitute them as parties to the appeal.

The Appeal herein was canvassed by way of written submissions and both parties had accordingly filed their submissions and the issues for determination before me are whether the trial magistrate had jurisdiction to issue and grant the orders sought.

From the pleadings filed it is not disputed that the Appellants appeal was himself on the ground that the trial Magistrate failed to exercise his authority to compel the Registrar and Surveyors Narok to comply with a decree he had issued. The order was geared towards the aforesaid officers to do an act which in my view the trial Magistrate was correct in declining since this could only be possible by way of a Judicial Review Application which the Magistrate could not entertain.

The issue of Jurisdiction has extensively been dealt with in our system and it is now established that jurisdiction is everything and once a court finds that it lacks jurisdiction then it ought to down its tools. What was before the trial court was an Application which sought the court to order third parties to be compelled to do certain acts and the court was right in finding that it lacked the requisite Jurisdiction to hear and determine the issue before it.

The Respondents in their response have also stated that the Appellants have not substituted the 3rd, 4th and 5th Respondents who have since died. This is a fatal mistake that the Appellants have never disputed nor gave any reasons why they were not substituted.

From the above, I find that the Appeal herein lacks merit and I consequently order that the same is dismissed with costs to the Respondents.

DATED, SIGNED and DELIVERED in open court at NAROK on this 18TH day of MARCH, 2019.

Mohamed N. Kullow

Judge

18/3/19

in the presence of: -

CA:Chuma

Ms Muigai for the Respondents

Richard Langat 1st Appellant

Rev. Victor Tanui 2nd Appellant

Mohamed N. Kullow

Judge

18/3/19