



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. E147 OF 2024

THOMAS MACHWANDA LUTTA

APPELLANT

AND

EMMANUEL ODHIAMBO ODIPO

RESPONDENT

(Being an appeal from the Ruling of Hon. Marcella A. Onyango (SRM) in Mumias ELC Misc. App. No. E019 OF 2024, delivered on 5th August 2024)

JUDGEMENT

1. On 5th August 2024, the trial court delivered a ruling in which it dismissed the Appellant's application for leave to file suit against the Respondent out of time.
2. What the court deciphers from the record is that the subject matter of the intended suit was land, and the Appellant's intended suit was for a declaration that he had entered into an agreement with the Respondent for the sale of Plot No. Mumias Township Block 1/75, for

which he had already paid Ksh. 249,000/=. The Appellant's intended suit was for orders of specific performance of the agreement or, in the alternative, a refund of the consideration already paid.

3. Being aggrieved with the order of dismissal, the Appellant filed an appeal in which he faulted the decision of the trial court.
4. The appeal was canvassed through written submissions.

Analysis and Determination

5. The court notes that the cause of action herein relates to a contract for sale of land. The court, therefore, needs to determine whether it is seized with the jurisdiction to hear and determine a matter relating to land.
6. It is well settled that jurisdiction is everything. It is the bedrock upon which any matter before the court is anchored. Without jurisdiction, the court is powerless to move even an iota. In the locus classicus case of **Owners of the Motor Vessel Lillian 'S' v. Caltex Oil (K) Limited [1989] eKLR**, it was held that where a court finds itself without jurisdiction, it must down its tools.

7. Generally, the High Court has unlimited original jurisdiction in civil and criminal matters. However, its jurisdiction does not extend to matters reserved for specialized courts under Article 162 (2) and 165 (5) of the Constitution. Pursuant to the aforesaid provisions of the Constitution, the Environment and Land Court is vested with exclusive jurisdiction over disputes relating to the use, occupation, and title to land.

8. Section 13 (2) (d) of the Environment and Land Act provides:-

“In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes -

(d)relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land.”

9. Whether this court has jurisdiction is anchored on the predominant purpose test. From the record, the substantial purpose of the transaction between the Appellant and the Respondent was the sale of land. In the premises, the jurisdiction to hear and determine

any dispute arising from the said transaction lies with the Environment and Land Court. See **Susanne Achieng Butler & 4 others v. Redhill Heights Investments Limited & Another [2016] KEHC 1313 (KLR)** where it was held that:-

“When faced with a controversy whether a particular case is a dispute about land (which should be litigated at the ELC) or not, the Courts utilize the Pre-dominant Purpose Test: In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works.

The Court must first determine whether the predominant purpose of the transaction is the sale of land or construction. Whether the High Court or the ELC has jurisdiction hinges on the predominant purpose of the transaction, that is, whether the contract primarily concerns the sale

of land or, in this case, the construction of a townhouse.

Ordinarily, the pleadings give the Court sufficient glimpse to examine the transaction to determine whether sale of land or other services was the predominant purpose of the contract. This test accords with what other Courts have done and therefore lends predictability to the issue.”

10. The purpose of Appellant’s application before the trial court was to secure leave to file suit before the court. Section 28 (5) of the Limitation of Actions Act defines “*court*” as the court in which the action has been brought or is intended to be brought. Since the intended suit could only be brought before the Environment and Land Court, the High Court is ousted of jurisdiction to hear an appeal emanating from the application.
11. The initial application ought to have been filed in the Environment and Land Court. The trial court, therefore, lacked jurisdiction to hear and determine the application. By extension, this court also lacks

jurisdiction. The appeal is therefore struck off with no order as to costs.

Dated, signed, and delivered at Kakamega, this 12th day of February 2026.

**A. C. BETT
JUDGE**

In the presence of:

No appearance for Parties

Court Assistant: Polycap

COPY