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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

APPEAL CASE NO. E198 OF 2024

JAMES GICHURU GICHUKI.....
APPELLANT

VERSUS

PHYLLIS NDUNGE.....
RESPONDENT

*(Being an Appeal from the Ruling of Hon. S.A Opande (PM)
Nairobi Delivered on 4th July, 2024 Involving Commercial
Case No. 4879 of 2019)*

BETWEEN

JAMES GICHURU GICHUKI.....
APPELLANT

VERSUS

PHYLLIS NDUNGE.....
RESPONDENT

RULING

1. This matter has been proceeding before this Court and is scheduled for delivery of judgment.
2. This is in respect of the Appeal from the Ruling of **S.A. Opande (PM)** Nairobi delivered on 4th July 2024 involving **Commercial Case No. 4879 of 2019.**

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Background Facts

3. In the Ruling, the Trial Court dismissed the Appellant's application by way of a Notice of Motion dated 20th July, 2024, with costs.
4. That application had sought to reinstate the Plaintiff's suit for hearing and determination.
5. The Plaintiff's suit had even been dismissed for want of prosecution.
6. The Appeal is opposed. Parties agreed to dispose of the Appeal by way of written submissions. Indeed, Counsel did file written submissions and highlighted the same.
7. The matter was thereafter scheduled for judgement which was reserved on one occasion due to pressure of work.
8. When the Court finally retired to consider the matter, it became apparent that jurisdiction though not raised by any party, is a glaring and unmistakable issue.
9. It is clear to this Court that before a Court considers a dispute before it, it should be convinced that it has jurisdiction. A Court can only comfortably hear and determine a matter if it is vested with jurisdiction.

Issues for Determination

10. It is therefore clear to the Court that it has to be convinced that it has the requisite jurisdiction before proceeding to consider and write a judgement herein. That become the single issue for determination;

(a) Whether the Court is vested with the jurisdiction to hear and determine this matter.

Analysis

11. The leading case on the jurisdiction of a Court remains the case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR)**. The Court of Appeal uttered the now famous words that still hold true today;

"Jurisdiction is everything. Without it, a court has no power to make one more step... A court of law downs tools the moment it holds the opinion that it is without jurisdiction."

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12. Jurisdiction still remains everything and without jurisdiction a Court of law would be acting in vain. Its actions would be a nullity.
13. The Court has taken note that this appeal arose from a decision of the **Chief Magistrate, Milimani Commercial Courts MCELC No. 4879 of 2019 James Gichuru Gichuki vs Phyllis Ndunge.**
14. The Plaint dated 3.7.2019 was filed before the **Environmental and Land Division** of the Milimani Chief Magistrate's Court. It is a dispute over **Plot No. 165 Home Way Poultry Farm Limited.** It is a dispute about ownership and possession. Those are not matters for this Court, but for the **Environment and Land Court** established under **Article 162 (2) (b) of the Constitution of Kenya.**
15. The **Environment and Land Court** is a Court of equal status to this Court. It exclusively handles disputes relating to land, title and ownership.
16. It would appear that the error or mistake arose when the Appellant in his Memorandum of Appeal dated 1st August 2024, described the suit before the Trial Court, as a

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Commercial dispute. Naturally Commercial Appeals land before the Commercial and Tax Division of this Court. Environment and Land Appeals land before the Court of equal status being the Environment and Land Court.

17. It is regrettable that this error has been perpetuated or maintained since this Appeal was filed. The Counsel for the parties did not raise this issue of jurisdiction at any time.
18. However, this Court cannot assume a jurisdiction that it does not possess. The parties cannot acquiesce to a jurisdiction that is expressly vested by Article 162 (2) (b) of the Constitution to the Environment and Land Court. In any event Section 13 of the Environment and Land Court Act, leaves no doubt to this Court, that the jurisdiction is vested in that Court.
19. Faced with similar situations, this Court has found it only fair and just to down its tools. For justice to be done and to be seen to be done, this matter is transmitted to the Court with the proper jurisdiction for hearing and determination. The file will be placed before the Presiding Judge of the Environment and Land Court Division, at the Milimani Law

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Courts, for further direction and orders. In doing so, the Court follows the current leaning that promotes access to justice as against hindering access to Courts by upholding technical objections. It is a shift from treating the various Courts as closed compartments, to embracing the Judiciary as one institution with various Courts exercising different jurisdictions. The primary duty of a Court remaining to do justice at all times. The Court follows the reasoning by **Honourable lady Justice S. N. Mutuku**. in **Kombo & 3 others v Siro & 3 others; Joxxela Limited (Interested Party) [2024] KEHC 439 (KLR)**.

Determination

21. This matter is HEREBY transmitted to the Environment and Land Court Division at the Milimani Law Courts for hearing and determination as the Court with the proper jurisdiction to hear and determine this matter.
22. The file will be placed before the Presiding Judge of the Environment and Land Court Division at Milimani Law Courts for further orders and directions.

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23. The Deputy Registrar of this Court to facilitate the transmission of this file.
24. This file at the Commercial and Tax Division of the High Court is marked as closed.
25. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 6TH
DAY OF MAY, 2026.**

**NJOROGE BENJAMIN K.
JUDGE**

In the presence of:

N/A for Mr. Wachakana for the Appellant.

Mr. Kiima for the Respondent.

Mr. John Paul - Court Assistant.