



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC APPEAL NO. 79 OF 2017**

**JOSEPH MADEGWA ..... APPELLANT**

**VERSUS**

**GAYLORD AVEDI ..... RESPONDENT**

**JUDGEMENT**

The appellant herein being dissatisfied with the judgment and decree of the learned G.A. Mmasi appealed to this honourable court 21<sup>st</sup> day of May, 2015 which appeal was based on the following grounds;

1. The learned Ag Senior Principal Magistrate erred in holding onto and purporting to hear a dispute involving interest in land in which the jurisdiction of the magistrates court had been expressly ousted by the Constitution of Kenya 2010.
2. The learned Ag Senior Principal Magistrate decision went against the weighty evidence and or was premised on irrelevant and extraneous matters not pleaded nor raised in evidence.
3. The learned Ag Senior Principal Magistrate erred in law by failing to address the matter prevailing properly and judicially.
4. The learned Ag Senior Principal Magistrate erred in law by allowing the plaintiff's claim which had not been proved to the required standard.
5. In all circumstances of the case the learned Ag Senior Principal Magistrate did not act judiciously or properly.

The appellant therefore prays for judgement in his favour.

The respondent submits that the principal magistrate had jurisdiction to hear the said case. The same was premised on practice directions on proceedings in the Environment and Land Courts, and on proceedings relating to the Environment and the use and occupation of and title to land and proceedings in other courts. Gazette Notice No. 5178 in particular –clause 8 that denoted “magistrate’s courts shall continue to hear and determine all cases relating to the environment and the use and occupation of and title to land (whether pending or new) in which the courts have the requisite pecuniary jurisdiction.

They further submit that the case herein was for refund of the purchase price of Ksh. 300,000 and the same was finalized and judgment delivered by Hon. G.A. Mmasi- Ag. Senior Principal Magistrate on the 28<sup>th</sup> day of April, 2015. The said sum was within the pecuniary jurisdiction of senior principal Magistrate who by then had jurisdiction to hear this instant case as per section 5 of The Magistrate’s Court Act Cap 10 (Rev. 2012) that notes ‘The Magistrate’s Courts shall have and exercise jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter in dispute does not exceed five million shillings for a Senior Principal Magistrate.’ It is also important to note that the case was finalized in 2015 before the prominent Malindi case of 2016 that had rendered void the jurisdiction of magistrate’s courts to preside over land.

The respondent submits that the Senior Principal Magistrate’s judgment was premised on evidence that was pleaded and raised in evidence by the respondent and appellant. This they rely in the fact that the Senior Principal Magistrate considered all parties to the suit when he found the interest rate to be 12% opposed to the 21% proposed by the respondent. The defendant (now appellant) more so did not deny the receipt of the Ksh. 300,000/=. That the findings of the senior Principal Magistrate were just and fair.

The respondent submits that the Senior principal magistrate did not err in law he allowed the plaintiff’s claim that had been proved to the required standard as under order 4 Rule 1 of the Civil Procedure rules 2010 that provides for particulars of a plaint; and notes that:-

1. The plaint shall contain the following particulars:-

- a. The name of the court in which the suit is brought. The same was done and the suit was filed in the Senior Principal Magistrate's court at Vihiga.
- b. The name, description and place of residence of the plaintiff, and an address for service. This is vivid under paragraph 1 of the plaint (page 3 of the Record of Appeal)
- c. The name, description and place of residence of the defendant so far as they can be ascertained. This is also vivid under paragraph 2 of the plaint page 3 of the Record of Appeal.
- d. The place where cause of action arose. This is denoted on page 4 of the record of appeal under paragraph 11 of the plaint.
- e. An averment that there is no other suit pending and that there have been no previous proceedings in any court between the plaintiff and the defendant over the same subject matter and the cause of action relates to the plaintiff named in the plaint. This was also done as per paragraph 9 of the plaint on page 4 of the Record of Appeal.

With the above foregoing, they submit that indeed the respondent's plaint had met the required standard.

The court has carefully considered the appeal and the submissions therein. On the issue of jurisdiction or lack of it in ground I this court looked at the case of *Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others* (2017) eKLR the court held that;

“By parity of reasoning, although under Article 162 (2) of the Constitution Parliament is mandated to establish courts with the status of the High Court to hear and determine disputes relating to employment and labour relations and environment and the use and occupation of, and title, to land, that in itself does not confer an exclusive jurisdiction to those specialized courts to hear and determine the specified types of cases. However, as already stated, Article 165 (5) is clear that the High Court has no jurisdiction in respect of matters falling within the jurisdiction of the specialized courts. Whereas Parliament is empowered to enact legislation to confer jurisdiction to the Magistrates courts to hear and determine disputes stipulated under Article 162 (2) of the Constitution, it cannot establish a Superior Court or confer upon a Superior Court jurisdiction to hear employment and labour relations cases and environment and land cases”.

**This court of appeal decision was delivered at Nairobi on 19<sup>th</sup> day of October, 2017. The trial court magistrate delivered this judgement subject of the appeal on 28<sup>th</sup> April 2015. The case was filed in May 2014.**

After the enactment by Parliament, The Statute Law (Miscellaneous Amendments) Act, 2015, Act No. 25 of 2015 received Presidential assent on 15<sup>th</sup> December 2015. Under Section 2 thereof, several laws were amended as indicated in the schedule thereto. Of relevance to this judgment were amendments made to The Environment and Land Court Act, Act No. 19 of 2011(the ELC Act) with a view to conferring on the Chief Justice the mandate to transfer Judges from the specialized courts to the High Court and vice versa, and clothing Magistrates courts with authority to hear and determine disputes relating to employment and labour relations and the environment and the use and occupation of, and title to, land. The relevant sections are as follows;

“26. Sitting of the Court

- (1) The Court shall ensure reasonable and equitable access to its services in all Counties.
- (2) A sitting of the Court may be held at such places and at such times, as the Court may deem necessary for the expedient and proper discharge of its functions under this Act.
- (3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.
- (4) Subject to Article 169(2) of the Constitution, the Magistrate appointed under sub-section (3) shall have jurisdiction and power to handle —
  - (a) disputes relating to offences defined in any Act of Parliament dealing with environment and land; and
  - (b) matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates' Courts Act.
- (4) Appeals on matters from the designated magistrate's courts shall lie with the Environment and Land Court.”

Amendments were made to Section 101 of the Land Registration Act which was amended by inserting the words “*and subordinate courts*” immediately after the expression “2011” and Section 150 of the Land Act that was amended by deleting the words “*is vested with exclusive jurisdiction*” and substituting therefore the words “*and the subordinate courts as empowered by any written law shall have jurisdiction.*” The Magistrates Courts Act, Act No. 26 of 2015, an Act of Parliament to give effect to Articles 23(2) and 169(1)(a) and (2) of the Constitution was enacted to confer jurisdiction, functions and powers on the magistrates' courts; to provide for the procedure of the magistrates' courts, and for connected purposes. It received Presidential assent on 15<sup>th</sup> December 2015. It was to commence on 2<sup>nd</sup> January 2016. Section 9 of that Act deals with claims in employment, labour relations claims; land and environment cases and provides that:

“A magistrate's court shall —

(a) in the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act (Cap. 12A) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to —

- (i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (ii) compulsory acquisition of land;
- (iii) land administration and management;
- (iv) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (v) environment and land generally.

(b) in the exercise of the jurisdiction conferred upon it under section 29 of the Industrial Court Act, 2011 (No. 20 of 2011) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to employment and labour relations.”

The appeal *Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others* (2017) eKLR arose from the judgment of the High Court (Emukule, Chitembwe, Thande, JJ) delivered on 11<sup>th</sup> November 2016 in which the court decreed that Section 2 of the Statute Law (Miscellaneous Amendments) Act, 2015;

“in relation to the jurisdiction of the subordinate courts, in respect of matters relating to environment and the use, occupation of and title to land is inconsistent with Article 162(2) of the Constitution, and therefore null and void.”

This means that magistrate’s court had jurisdiction at that time to entertain land matters prior to the amendments in 2015 discussed above. The case was filed in May 2014.

On the rest of the grounds which can be summarized as to whether the senior principal magistrate erred in law by failing to address the matter prevailing properly and judicially and whether the senior principal magistrate erred in law by allowing the plaintiff’s plaint which had not been proved to the required standard, I have perused the record of appeal in great detail. The trial magistrate considered all sentiments of both parties as was vividly expressed in his judgment (pages 78-81 of the record of appeal). The case herein was for refund of the purchase price of Ksh. 300,000. The defendant (now appellant) did not deny the receipt of the Ksh. 300,000/=. The Senior Principal Magistrate considered all parties to the suit when he found the interest rate to be 12% opposed to the 21% proposed by the respondent. The trial magistrate had judicial authority to reside over the matter. I find that the Senior Principal Magistrate did not err in law as he addressed the matter prevailing before him properly and judicially.

In *Mwanasokoni v Kenya Bus Service* (1982 - 88) 1 KAR 870, it was held that this court is duty bound to revisit the evidence on record, evaluate it and reach its own decision in the matter. This court however, appreciates that an appellate court will not ordinarily interfere with the findings of fact of the trial court unless they were based on no evidence at all, or on misapprehension of it or the court is shown demonstrably to have acted on wrong principles in reaching the findings. The court finds that the decision was judiciously arrived at and will not interfere with the same. The court finds no basis to interfere with the award as it was based on cogent evidence. This appeal is dismissed for lack of merit. The appellant is to meet the costs of the appeal.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 9<sup>TH</sup> DAY OF OCTOBER 2018.**

**N.A. MATHEKA**

**JUDGE**