



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO. 215 OF 2017**

**FORMERLY EMBU ELC CASE NO.266 OF 2015**

**FORMERLY MERU ELC CASE NO.8 OF 2015**

**MUTEGI MUGWETWA.....PLAINTIFF**

**VERSUS**

**COUNTY MINISTRY OF LANDS, PHYSICAL PLANNING ENERGY &**

**ICT COUNTY GOVERNMENT OF THARAKA NITHI .....1<sup>ST</sup> DEFENDANT**

**COUNTY GOVERNMENT OF THARAKA NITHI DIRECTOR GENERAL**

**(KENYA URBAN RURAL AUTHORITY).....2<sup>RD</sup> DEFENDANT**

**KENYA URBAN ROADS AUTHORITY.....3<sup>TH</sup> DEFENDANT**

**THE REGIONAL MANAGER-UPPER EASTERN**

**(KENYA URBAN ROADS AUTHORITY) .....4<sup>TH</sup> DEFENDANT**

**TERRITORIAL WORKS (K) LTD.....5<sup>TH</sup> DEFENDANT**

**RULING**

1. An oral application was made on **11.7.2017** requesting the court to pronounce itself regarding the validity of orders issued by the High Court in this matter when the high court had no jurisdiction to hear land matters.

2. **Mr. Murimi Murango** representing the plaintiff framed the matter this way: *“We need directions regarding if orders issued in matters heard before the High Court which had no jurisdiction are not void ab initio.”*

3. **Miss Kung’u** representing the **3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup>** defendants supported **Mr Murimi’s oral application**. Miss Kung’u also held brief for Mr Waweru Gatonye the interested parties’ advocate. **Mr. Mwiti** holding brief for **Mr Murango Mwenda**, the **1<sup>st</sup> defendant’s advocate**, also supported the application.

4. I have carefully considered the application. I need not reinvent the wheel. The issue of jurisdiction

should be tackled the minute it is raised. In the celebrated case of “*The MV SS Lilian S*,” Justice Nyarangi, JA, opined as follows:

***“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 downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”***

5. The Supreme Court in the case of Samuel Kamau Macharia & Another versus Kenya Commercial Bank and Two others – Sup. Ct. Civil Application No. 2 of 2011 opined as follows:

***“A court’s jurisdiction follows from either the constitution or legislation or both. Thus a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents in his submissions that the issue as to whether a court of law had jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter for without jurisdiction, the court cannot entertain any proceedings.”***

6. Article 165 (5) of the Constitution of Kenya is pellucid that:

***“(5) The High Court shall not have jurisdiction in respect of matters:-***

***(a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or***

***(b) falling within the jurisdiction of the courts contemplated in Article 162(2).”***

7. The Environment and Land Court is one of the two courts contemplated by Article 162 (2) of the Constitution.

8. The Supreme Court in the case of Republic (Appellant) AND Karisa Chengo & 2 others (Respondents), Petition No. 5 of 2015 pronounced itself eruditely concerning jurisdiction of the High Court vis-à-vis courts of equal status.

9. From the foregoing authorities and provisions of the law, it is clear that the High Court, after the Environment and Land Court was established, did not have jurisdiction to entertain Environment and Land matters.

10. I do note that this suit was filed in the year 2015 when the Environment and Land Court had been in existence for several years. I opine that the High Court had no justification or business in entertaining an environment and land suit when it had no jurisdiction to do so.

11. I wish to allude to an issue raised by Miss Kung’u, for the AG representing the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants. Miss Kung’u, while supporting the oral application by Mr. Murimi for the plaintiff, asked the court to take into cognizance public policy that court orders cannot be issued in vain and therefore urged the court to validate orders issued by the High Court in this matter before it was transferred to this court.

**12. Burrough, J, in M Richardson versus Melish (1824) 2 Bing 252** opined as follows: ***“Public policy is a very unruly horse, and when you get astride it you never know where it will carry you.”*** This case was quoted with approval by Lord Bramwell in **Mogul Steamship Co. Ltd versus Mc Gregor, Gow & Others, [1982] AC 25.**

13. In the Kenyan context public policy cannot carry one to a situation where a court may contrive jurisdiction when it has none. As Justice Nyarangi, J.A, opined in the case of ***“The MV Lilian SS,”***

***“Jurisdiction is everything.”***

14. The Supreme Court in S C Petition No. 5 of 2015 (supra) eruditely and definitively pronounced itself in this area. It said: “...***Lack of jurisdiction thus renders a court’s decision void as opposed to voidable. When an act is void, it is a nullity ab initio. It cannot found any legal proceedings.***” This court cannot validate proceedings conducted by a court which lacked jurisdiction. Orders made by the High Court concerning this suit are ***null and void ab initio.***

15. I find as follows:

1. Proceedings conducted in the High Court before this suit was transferred to this court are null and void.
2. Orders issued in those proceedings are void and, therefore, unenforceable.
3. Pleadings filed in this suit before and after this suit was transferred to this court are valid and if any applications have not been heard by this court, they will be heard afresh.
4. Following parties’ intimation by consent on 11.7.2017 that status quo be maintained restraining the defendants by themselves, their agents or servants or interested parties from demolishing the plaintiff’s commercial building erected on Chuka Town Plot Nos. 3 and 4, it is hereby ordered that status quo be maintained until further orders or directions are issued by the court.
5. It is so ordered.

Delivered in open court at Chuka this **31<sup>st</sup> day of July, 2017** in the presence of:

CA: Ndegwa

Murimi Murango for the plaintiff

Kiongo for 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants

Kiongo h/b Waweru Gatonye for alleged contemnors

**P. M. NJOROGE**

**JUDGE**