



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ELC. CIVIL APPEAL NO. 41 OF 2012

DANIEL LWAMBI1ST APPLICANT/APELLANT
IDI KATANA.....2nd APPLICANT/APELLANT
GEORGE TUJI.....3RD APPLICANT/APELLANT

-VERSUS-

PENGUNI HOLDINGS LIMITED.....RESPONDENT

AND

IDDI IBRAHIM

YUSUF NEVI (Suing on behalf of 127 members of

Mabirikani Village Land Committee).....INTERESTED PARTIES

RULING

1. The Interested parties raised a preliminary objection that the suit No RMCC 2524 of 2011 was filed in Court that had no jurisdiction to hear the matter. The essence of the preliminary objection is that the Magistrate's Court has no jurisdiction to entertain a suit involving land unless it is indicated that the value of the land is within its jurisdiction.
2. The parties filed written submissions in support of and against the preliminary objection. The interested party submitted that under article 162 (2) (b) of the Constitution, land matters are to be heard strictly by the environment and land Court. Secondly that the pecuniary value of the property in dispute surpasses the jurisdiction of the Resident Magistrate's Court. They cited the case of **The Owners of Motor Vessel "Lilian S" vs Caltex Oil K Ltd (1989) KLR**.
3. The Respondent on his part quoted Clause 7 of Chief Justice's the practice directions which allowed Magistrate's Court to continue hearing matters whether pending or new in which the Courts have pecuniary jurisdiction. The Respondent also submitted that the preliminary objection was not purely a part of law as it touched on factual matters in contravention of the decision in **Mukisa Biscuit Company vs West End Distributors Ltd (1969) E. A 696**.
4. I have considered the submissions and case law cited by the interested party. The suit RMCC 2524 of 2011 was filed on the 4th November 2011 before the establishment of the Environment and Land Court. When Article 165 (2) of the Constitution was enacted, it provided for transitional

clause. Pursuant to these transitional clauses, the Chief Justice gave directions as regards the cases that were pending before the establishment of the Environment and Land Court.

5. In the case of **Edward Mwaniki Gaturu & Another vs A. G & 3 Others (2013) eKLR**, Justice Lenaola making reference to section 13 (1) of the Environment and Land Court Act stated that parliament did not intend the Environment and Land Court to have exclusive jurisdiction to hear and determine matters related to the environment as it was given both original and appellate jurisdiction. Section 13 (4) of the Act provided thus ;

In addition to the matters referred to in subsection 1 and 2, the Court shall exercise appellate jurisdiction over the decisions of the subordinate Courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

6. Most recently, parliament has amended the Environment and Land Court Act and the Magistrate's Court Act which amendments bestowed jurisdiction on the magistrate's Courts to hear land matter matters which fall within their pecuniary jurisdiction. Since the appeal has not been determined, I am of the view that the amendments are applicable in determining this objection raised within the appeal. The amendments breathed life to what was already in existence. In section of the Magistrate's Court's Act jurisdiction is conferred upon the Court to hear all matters relating to land and environment where they have pecuniary jurisdiction.
7. The second limb raised is that the resident Magistrate's Court did not have pecuniary jurisdiction. The interested party submitted that the land is vast measuring 11.2 ha therefore beyond the jurisdiction of that Court. The Respondent submitted this is a factual matter which requires proof. I do agree with the Respondent's submission on this aspect. Whether the value of the land surpassed the pecuniary jurisdiction of the Magistrate ought to have been raised before the trial Court that would then be able to call evidence to determine it. No valuation report was attached to enable this Court know its monetary value. The fact that it is 11.2 ha does not by itself confirm that the value exceeds the pecuniary jurisdiction of the magistrate Court.
8. The value of the land was not pleaded in the plaint. The pecuniary jurisdiction of the Magistrate handling the matter is also not disclosed. The matter is before this Court to exercise its appellate jurisdiction. Unless the parties make an application to call additional evidence, this Court can not delve into factual matters raised by way of a preliminary objection. This objection fails.
9. In conclusion, I find no merit in the preliminary objection as regards lack of jurisdiction of the Court where the suit was filed. The appeal shall be heard on its merits.

Ruling dated and delivered in Mombasa this 22nd day of April 2016

A. OMOLLO

JUDGE