



**Rehmtulla v Shivji; Director of Land Valuation (Interested Party)
(Through the Attorney General's Office) (Environment and Land Appeal
E010 of 2021) [2024] KEELC 889 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 889 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E010 OF 2021
LN MBUGUA, J
FEBRUARY 22, 2024**

BETWEEN

ZAHIL MOHAMMED REHMTULLA APPELLANT

AND

RATAN SHIVJI RESPONDENT

AND

**DIRECTOR OF LAND VALUATION INTERESTED PARTY
THROUGH THE ATTORNEY GENERAL'S OFFICE**

*(Being an appeal from the ruling of the Honourable D. Kivuti SRM
delivered on the 20/11/2020 and sent an email for delivery on 16/12/2020 in
Nairobi Milimani Magistrates court in MCE & LC case no. 1452 of 2020)*

JUDGMENT

1. The memorandum of appeal is dated 23.2.2021, whereby, the Appeal was triggered by the ruling delivered on 20.11.2020 by Hon D. Kivuti in CMMCC Case No. 1452 of 2020 dismissing a Preliminary Objection dated 12.10.2020 raised by the Appellant herein on the question of the subordinate court's pecuniary jurisdiction to hear the suit.
2. The Appellant raised 5 grounds of appeal which can be condensed to a sole issue; Whether the learned Magistrate erred in both fact and law in making a finding that the subordinate court had jurisdiction to determine the suit.
3. The appeal was canvassed by way of written submissions. The Appellant filed submissions dated 20.12.2023 arguing that as per the valuation report dated 9.10.2020 which was not objected to by the Respondents herein, the value of the suit property was ksh.25 million at the time, which value exceeded



the pecuniary jurisdiction spelt out at Section 7 (1) of the Magistrate's Court Act and reiterated in *Amani Mara Ltd v Ahif Ayub Suleiman & Another* [2017] eKLR.

4. No submissions were filed by the Respondents and the Interested Party in opposition to the appeal.
5. I have considered the record of Appeal and the submissions filed thereof by the appellant.
6. After raising a Preliminary Objection on the question of jurisdiction, the Defendant (now Appellant) also swore a replying affidavit annexing a valuation report from Hossano Valuers Limited valuing parcel LR 36/111/993 at ksh. 25 million as at 9.10.2020. In opposition, the Plaintiff in the matter who is the Respondent herein contended that the value had been exaggerated. In a ruling dated 20.11.2020, the court found that the Preliminary Objection had no merit as the facts were contested.
7. The learned Magistrate properly directed himself unto the applicable legal framework relating to preliminary objections in tandem with the holding in *Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors* (1969) EA 696. But again, the trial court misdirected itself in giving directions on the hearing of the pending application instead of giving adequate directions in regard to the issue before the court; Jurisdiction!. In essence, the trial court assumed jurisdiction to hear the matter without subjecting the issue to an analysis.
8. Keeping in mind the principles set out in *Owners of the Motor Vessel Lilian S* [1989] KLR 1 that Jurisdiction is everything, then it is the finding of this court the trial court ought to have analyzed and determined the question of jurisdiction with finality. For instance, if there were parallel facts regarding the value of the property, then a government valuer could have been called upon to determine the value of the suit property. As the matter stands, there is nothing in the ruling of 20.11.2020 to indicate that the respondent availed any valuation report to counter the one availed by the appellant.
9. In the end, I find that the appeal is merited and I proceed to give orders as follows;
 1. The ruling of 20.11.2020 is set aside.
 2. The matter is remitted back to the trial court for determination of the question of jurisdiction.
 3. Each party is to bear their own costs of this appeal as well as costs relating to the prosecution of the preliminary objection dated 12.10.2020.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Mute holding brief for Mr. Mwaura

Ngina for Attorney General (Interested Party)

Court assistant: Eddel

AMENDED AND SIGNED AT NAIROBI THIS 4TH DAY OF JUNE 2024

LUCY N. MBUGUA

JUDGE

