



Nasib Farm Limited v Tatu & 2 others (Environment and Land Case Civil Suit 640 of 2014) [2024] KEELC 1584 (KLR) (21 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1584 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 640 OF 2014**

**J OMANGE, J
MARCH 21, 2024**

BETWEEN

NASIB FARM LIMITED PLAINTIFF

AND

AHMED ABDI TATU 1ST DEFENDANT

ABDIKADIR ADAN HUSSEIN 2ND DEFENDANT

IFTIN ALI 3RD DEFENDANT

RULING

1. The matter is coming up for ruling on the Notice of Motion application dated 19th April 2023 where applicant is seeking for the following orders:
 - a. That the suit be struck out with costs to the defendant.
 - b. That in the alternative the suit be transferred to the Environment and Land court in Garissa.
 - c. Costs of the application be provided for.
2. The Application was supported by an Affidavit sworn by Patrick Amuga the applicant's advocate who avers that the suit was initially filed in the High Court and as such is incompetent as the Environment and Land Court which was operational at the time of filing, was the correct court to determine this matter which touches on land use. The applicant contends that the suit was irregularly transferred to this Honourable court which lacks territorial jurisdiction. As such the court should not validate the suit which it should strike out or in the alternative transfer the suit to the court with territorial jurisdiction in this case Garissa courts.
3. The Applicants in their submissions relied on the case of *Cordiscons International (Kenya) Limited v National Land Commission and 4 Others* [2017] eKLR, in which Olola J allowed a preliminary



objection that brought out the issue of a suit being incompetent based on lack of jurisdiction of the court that 1st heard it and subsequently ousting jurisdiction of the sitting court.

4. The Plaintiff/Respondent vide a replying affidavit dated 13th August 2023 averred that at the time, the Environment and Land court lacked a registry and that is why the matter was first filed in the High Court before being transferred to the Environment and Land Court. They further argued that a transfer to Garissa would hinder access to justice as the local police had frustrated hearing of the case.
5. Having considered the foregoing, the only issue the court has to determine is whether the application is warranted. The centrality of jurisdiction was underscored in the celebrated case of Owners of the Motor Vessel "Lillian S" (*supra*) wherein the Court held:

“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.”

6. Accordingly, in Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR, the Supreme Court held that:

“A court’s jurisdiction flows 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 by law. We agree with counsel for the first and second Respondents in his submission that the issue as to whether a court of law has 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...Where the Constitution exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a court of law beyond the scope defined by the Constitution. Where the Constitution confers power on Parliament to set the jurisdiction of a court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

7. . The Applicants herein state that the suit was filed in the High Court in contravention of the Constitution, the Civil Procedure Act and the Environment and Land Act NO 19 of 2011 and should be struck out. The respondent on the other hand concedes that the matter was wrongly filed at the High Court, but insists that the High Court had power to transfer the suit. Article 162(2) (b) of the Constitution empowers parliament to “establish Courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to land.” In this regard and pursuant to Article 162(3) of the Constitution, Parliament enacted the Environment and Land Court Act, Act No. 19 of 2011. Section 13 of the Environment and Land Court Act outlines the jurisdiction of the Environment and Land Courts as follows:

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.....
- e) Any other dispute relating to environment and land.



8. It is clear that in a case involving land, the court with the requisite jurisdiction is the Environment and Land Court. Equally it is fairly settled law that a court has no power to transfer a suit filed in a court with no jurisdiction. However, in the case of the Environment and Land Court considering that the courts were a creation of the new Constitution, the ELC Practice Directions number 5 which were published on 25th July, 2014 specifically allowed the High Court to transfer to the Environment and Land Court all cases relating to land where hearing was yet to commence. This case was thus properly transferred to the Environment and Land Court.
9. On the question of geographical jurisdiction, the Applicant argues that the suit property is in Garissa hence the matter should be transferred to Garissa while the Respondent contends that the police in Garissa are likely to frustrate the matter. This argument is not only unproven, but is also not sufficient reason to file a case in another geographical area.
10. However, in the present case I consider that this is an old matter way beyond the three-year age limit that the Judiciary aspires to in terms of case disposition. Furthermore, there is no permanent Environment and Land Court in Garissa. As such transferring the case will only delay the conclusion further. In the circumstances the matter shall proceed in Nairobi. The court will set a time table for conclusion of the case which all parties should adhere to. The application is thus dismissed. Costs shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 21ST DAY OF MARCH 2024.

JUDY OMANGE

JUDGE

In the presence of:

Mr. Ondara for Mr. Nyandieka for the Respondent

Steve - Court Assistant

