



IN THE COURT OF APPEAL

AT NYERI

(CORAM: VISRAM, KOOME & ODEK, J.J.A.)

CIVIL APPEAL NO. 167 OF 2012

BETWEEN

JOEL NDIRANGU NJARAMBA .....APPELLANT

AND

JAMES MWANGI KAMURU ..... RESPONDENT

*(An appeal from the judgment of the High Court of Kenya at Nyeri ( Sergon, J.) dated 7<sup>th</sup> May, 2010*

*in*

*H.C.C.A NO. 48 of 2009)*

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JUDGMENT OF THE COURT

1. By a Plaint dated 22nd April, 2004, the appellant filed suit in the Senior Resident Magistrate's Court at Nanyuki seeking a declaratory order that **Plot No. A. 4 Majengo**, also known as **Plot No. Block 8/214 Nanyuki Municipality**, was fraudulently transferred to a one Jane Wanjiru d/o Wangui and later to Elizabeth Wambui d/o Kamuru. The Appellant further sought a mandatory injunction against the defendants to restrain them from transferring the plot and seeking orders to hand over possession of the suit property to the appellant with all the developments thereon.

2. The trial magistrate upon hearing the parties entered judgment for the appellant. The respondent was aggrieved and he lodged an appeal to the High Court. The learned Judge of the High Court, **(Sergon, J.)**, in a judgment dated 7th May, 2010, set aside the judgment of the trial court and substituted it with an order dismissing the suit filed by the appellant. In setting aside the judgment, the learned Judge held that the trial magistrate's had no jurisdiction to hear and determine the case. The learned Judge expressed himself as follows:

**“It is apparent from the evidence tendered that the learned Senior Principal Magistrate cancelled the leasehold issued to Wambui Kamuru. The aforesaid lease was issued on 11th July 1987, to last for 99 years with effect from 1st January, 1983. The lease was issued pursuant to the provisions of the Registration of Titles Act, (Cap 281 of the Laws of Kenya). Under Section 2 of the Registration of Titles Act, the Court is defined as the High Court. It is, therefore, obvious that the learned Senior Principal Magistrate had no jurisdiction to hear and determine the dispute”.**

3. Aggrieved by the decision of the High Court, the appellant has lodged this appeal citing three grounds

**(a) That the learned Judge erred in law in failing to analyse and evaluate the whole evidence tendered before the trial court and in particular did not address himself on the fact that the record of appeal filed therewith was incomplete and incompetent for failure to contain documents and or exhibits produced in the trial court.**

**(b) The learned Judge erred in law in allowing the respondent's appeal on technical issues like jurisdiction and occupational licence while there was no evidence to support the same.**

**(c) The learned Judge erred in law in failing to address himself on issues of fraud raised by the appellant and thereby arrived at a wrong decision.**

4. At the hearing of the appeal, learned counsel **Gichuki Mwangi** appeared for the appellant while taught counsel **W. Muthingani** appeared for the respondent.

5. Counsel for the appellant elaborated on the grounds of appeal emphasizing that the learned Judge did not evaluate the evidence on record but relied on technical issues such as want of jurisdiction on the part of the trial court and whether a temporary licence was transferable on death of a licensee. Counsel submitted that fraud was pleaded as an issue in the suit and the Judge did not consider the same and he erred in failing to consider discrepancies in how title to the suit property was acquired. Counsel submitted that the evidence on record raised doubt as to when the deceased died and these issues should have been addressed by the learned Judge. Counsel submitted that the trial magistrate's court had jurisdiction to hear and determine the matter.

6. Counsel for the respondent in opposing the appeal urged this Court to uphold the decision by the High Court. It was submitted that the property in dispute is registered under the **Registration of Titles Act** and **Section 2** the Act defines "court" as the High Court. From the definition of court in the Act, the respondent submitted that it was clear that the trial magistrate's court at Nanyuki had no jurisdiction to hear and determine the matter. Counsel submitted that all other issues raised by the appellant in his submission are neither here nor there as the trial magistrate had no jurisdiction. On the issue of temporary licence, counsel submitted that a temporary occupational license is personal to the licensee and terminate on death of the licensee. That such a licence cannot be transmitted by way of succession and hence there was nothing the appellant could inherit on the death of Wangui d/o Wambugu who had a temporary licence. Likewise, the temporary licence having terminated on the death of Wangui d/o Wambugu was not part of her estate. The respondent urged this Court to dismiss the appeal and uphold the judgment of the High Court.

7. We have considered the submissions by the learned counsel in this matter. It is trite law that jurisdiction is everything. We are mindful of the case of **Lillian 'S' [1989] KLR 1**, in which this Court succinctly set out the principles and context for determination of jurisdiction. **Nyarangi, J.A.** stated, inter alia:-

**"Jurisdiction is everything. Without it, a court has no power to make one more step. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."**

8. In the present appeal, the starting point is the decision in Lillian 'S' Case as restated by the Supreme Court **In the Matter of Advisory Opinions of the Supreme Court under Article 163(3) of the Constitution- Constitutional Application No. 2 of 2011:-**

**"The Lillian 'S' case [[1989] KLR 1] establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity."**

9. From the Supplementary Record of Appeal filed in this case, it is clear that the suit property is governed by the provisions of the **Registration of Titles Act, Cap 281** of the **Laws of Kenya. Section 2** of the aforesaid **Act** defines court to mean the High Court. By virtue of the definition of court in **Section 2** of the aforesaid **Act**, we are satisfied that the trial magistrate's court at Nanyuki had no jurisdiction to hear and determine any matter in relation to land registered under the **Registration of Titles Act**. We hold that the learned Judge did not err in setting aside the judgment and decree made by the trial magistrate and substituting the same with an order dismissing the appellant's suit.

10. Considering that all other issues raised by the appellant in his submission depend on jurisdiction, we decline to consider the same as the appellant (subject to the limitation of actions) is at liberty to seek relief before a competent court of law. We find this appeal has no merit and is dismissed with costs.

**Dated and delivered at Nyeri this 31st day of March, 2014.**

**ALNASHIR** **VISRAM**

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**JUDGE** **OF** **APPEAL**

**MARTHA** **KOOME**

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**JUDGE** **OF** **APPEAL**

**J.** **OTIENO-ODEK**

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**JUDGE** **OF** **APPEAL**

**I certify that this is a true copy of the original.**

**DEPUTY** **REGISTRAR**