



REPUBLIC OF KENYA



**Njoroge v Muthondu (Environment and Land Appeal E011 of 2023)
[2024] KEELC 5632 (KLR) (18 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5632 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E011 OF 2023
LC KOMINGOI, J
JULY 18, 2024**

BETWEEN

ANDREW RUO NJOROGE APPELLANT

AND

ESTHER NJERI MUTHONDU RESPONDENT

*(Being an Appeal against the Ruling of Hon. P. Achieng (SRM) in
Ngong' Civil Case No. E200 of 2022 delivered on 13th April 2023)*

JUDGMENT

1. On the 13th April 2023, Honourable P. Achieng SPM stated thus;

“I therefore find that this court is seized with jurisdiction to entertain the present suit. The application therefore lacks merit and is dismissed with costs to the Plaintiff.”
2. Aggrieved, the Appellant has appealed seeking that the Ruling be set aside for want of jurisdiction on the following grounds;
 1. The learned Magistrate erred in law and in fact in when she held that the 2nd Defendant's / Appellant's application dated 14th December 2022 lacked merit.
 2. The learned Magistrate erred in law and in fact when she failed to take into account the fact that the suit was not a civil one but an Environmental and Land Case and that the value of the subject matter was way beyond the pecuniary jurisdiction of the Court.
 3. The learned Magistrate erred in law and in fact when she failed to appreciate that the 2nd Defendant/Appellant was challenging the pecuniary jurisdiction of the court.
3. The Appeal was canvassed by written submissions.



4. The Appellant's submissions are dated 23rd October 2023. It is the Appellant's case that the subject matter of the suit is an interest in land particularly creation of a charge on land title No. Ngong/Ngong/52025 which is a piece of land whose value exceeds the pecuniary jurisdiction of the Magistrate's Court.
5. He has put forward the cases of Tahir Sheikh Said Investments Ltd Vs. KCB Kenya Ltd & Another (2021) eKLR; Stanley Kangethe Kinyanjui Vs. Tony Ketter & 5 Others (2013) eKLR. He prays that the proceedings in the lower court be stayed.
6. The 1st Respondent's submissions are dated 13th November 2023. Counsel submitted that the appeal does not raise an arguable appeal as it attempts to raise the issue of jurisdiction of the court basing on the value of the subject property as security to obtain the second personal loan by the Appellant. She has put forward the case of Watu Credit Vs. Geoffrey Mokaya Aboki & Another (2022) eKLR.
7. It is further submitted that the subject matter of the case in the lower court is a personal loan of Kshs.4,000,000/= hence the value of the security is immaterial. She prays that the Appeal be dismissed with costs.

Analysis and Determination

8. I have considered the grounds of appeal, the record of appeal, the rival submissions and the authorities cited. The issues for determination are:
 - i. Whether the lower court erred in finding it has jurisdiction to determine the suit.
 - ii. Whether the Appellant is entitled to the orders sought.
 - iii. Who should bear costs of the appeal?
9. The Appellant seeks the setting aside of the ruling on the grounds that it does not have jurisdiction to hear and determine Senior Resident Magistrate ELC case Number E200 of 2022 filed by the Respondent. The Respondent filed that suit on grounds that the Appellant took a Kshs. 4,000,000 loan from Dimkes Sacco Limited (the 1st Defendant in the suit) and included her as a guarantor without her authority or approval. Both the Appellant and Respondent had earlier taken a Kshs. 2,000,000 loan from the same institution and secured it using title deed for parcel of land Ngong/Ngong/52025. The further loan taken by the Appellant without the Respondent's authority was also secured by the same title. The Respondent learnt about it when she received a demand letter from the lending institution threatening to instruct its auctioneers to sell the property due to loan arrears of Kshs. 222,000. She also stated that the Appellant had denied her proprietorship of the property, which they own jointly.
10. She therefore sought orders to restrain the Defendants in that suit from auctioning the land; an order barring the Appellant from collecting rental income from the property; an order compelling the Appellant to repay the loan; an order directing that the rental income from the property be shared in half and an order for compensation and costs together with interest.
11. The Respondent objected to the suit on grounds that the lower court lacked pecuniary jurisdiction to determine the suit since the value of the suit property was Kshs. 26,000,000.
12. The Honourable P. Achieng' in her ruling found thus;

“Looking at the Complaint, it is evident that what the Plaintiff disputes is that she was made a guarantor to a second loan advanced by the 1st Defendant to the 2nd Defendant of Kshs. 4 million without her consent or knowledge and the property in question is jointly owned



by the Plaintiff and the 2nd Defendant used as security for the said loan. The dispute is not relating to ownership of the property but the change over the property. The value of the property is therefore not relevant in determining the jurisdiction of the court.”

13. It is established that jurisdiction endows a court with the authority and mandate to adjudicate disputes. Jurisdiction is derived from statutory provisions, the monetary value involved in the dispute, or the territorial boundaries within which the dispute arises. In this regard, Mativo J. (as he then was) in *Republic v Magistrates Court, Mombasa; Absin Synegy Limited (Interested Party) [2022] KEHC 10 (KLR)* held:

“The jurisdiction of the court to adjudicate those issues depends on a number of elements including: - whether the suit discloses a cause of action which that court has jurisdiction to determine (e.g. breach of contract, negligence etc; whether the court has jurisdiction over the defendant; whether the court has jurisdiction to grant the remedy sought. Importantly, and highly relevant to this case, jurisdiction of the court does not extend into a foreign country. It refers to the local area upon which its jurisdiction extends within the Republic of Kenya.”

14. Whereas the Plaintiff has issues of the loan and access to the property, I find that the dispute emanates from a loan of Kshs. 4,000,000 which is well in the jurisdiction of the lower court. The other issues for determination are within the jurisdiction of the lower court unless, there is evidence that the pecuniary jurisdiction is exceeded.
15. I therefore find that, Honourable Achieng’ did not err in finding that the Court had jurisdiction to hear and determine the suit.
16. This Appeal is hereby dismissed with costs to the Respondent. In essence the Ruling delivered on 13th April 2023 is upheld.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 18TH DAY OF JULY 2024.

L. KOMINGOI

JUDGE.

In the presence of:

N/A for the Appellant.

Ms. T. Wasilwa for the Respondent.

Court Assistant – Mutisya.

