



**Pala t/a Muhatia Pala Auctioneers v Nyamai (Environment and Land Appeal  
E018 of 2023) [2025] KEELC 629 (KLR) (19 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 629 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND APPEAL E018 OF 2023  
MAO ODENY, J  
FEBRUARY 19, 2025**

**BETWEEN**

**NATHAN MUHATIA PALA T/A MUHATIA PALA  
AUCTIONEERS ..... APPELLANT**

**AND**

**SUSAN A NYAMAI ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the Respondent's Notice of Preliminary Objection dated 17<sup>th</sup> September, 2024 on the following grounds:
  1. Pursuant to the *Environment and Land Court Act* No 19 of 2011 read together with Gazette Notice No 5178, this Honourable Court lacks jurisdiction to hear and determine the matter and prayers sought in the Appellant's Memorandum of Appeal dated 14<sup>th</sup> September, 2023 herein being that the same raises issues that were dealt with in the Chief Magistrate Court Civil division which are not within the purview of this court.
  2. Therefore, this Honourable Court cannot grant the orders sought by the Appellant in their Memorandum of Appeal.
  3. In view thereof, the Appeal is fatally defective in substance and form, irregular, lacks merit, mala fides, unjust, bad in law, frivolous, vexatious and a gross abuse of court process.
2. The Respondent prayed that the Memorandum of Appeal dated 14<sup>th</sup> September, 2024 be dismissed in limine.
3. The Appellant filed Grounds of Opposition dated 11<sup>th</sup> October, 2024 and stated that the Notice of Preliminary Objection is incompetent as the Respondent has not pleaded the specific sections they are relying on in the *Environment and Land Court Act* No. 19 of 2011. He stated that the Respondent's



argument that the issues raised in the Memorandum of Appeal dated 14<sup>th</sup> September, 2023 are the same issues dealt with in the Chief Magistrates Court Civil Division does not hold water since the Respondent is aggrieved by the decision of the lower court on the said issues.

### **Respondent's Submissions**

4. Counsel for the Respondent filed submissions dated 16<sup>th</sup> January, 2025 and identified the issue for determination as: to whether this Honourable Court has jurisdiction to hear and determine this Appeal. Counsel submitted that this Court lacks jurisdiction to hear and determine the matter as the issues outlined in the Appeal should be dealt with in the High Court Civil Appeal Division for reasons that the matter emanates from the Chief Magistrate Civil Division. Counsel submitted that the lower court matter only touches on the issue of whether the Appellant should pay back the Respondent's monies that were paid to him as a deposit for purchase of an auction property.
5. Counsel submitted that the issue in contention is not what the Appellant was selling but rather whether they ought to have refunded the Respondent's funds after the deal aborted. Counsel submitted that the substratum of the judgment delivered on 12<sup>th</sup> September, 2011 does not deal with land issues in any way but rather the refund of the deposit paid hence making this matter purely a civil matter.
6. Counsel further submitted that pursuant to the *Environment and Land Court Act* No. 19 of 2011 read together with Gazette Notice No 5178, this Honourable Court lacks jurisdiction to hear and determine the matter. Counsel relied on Section 13 of the *Environment and Land Court Act* and the cases of *David Karobia Kiiru vs Charles Nderitu Gitoi & Another* [2018] eKLR and *Charles Murugu Mukindia & 2 others vs Consolidated Bank of Kenya Ltd & another* [2022] eKLR. Counsel prayed that the Appeal be dismissed with costs.

### **Appellant's Submissions**

7. Counsel for the Appellant filed submissions dated 16<sup>th</sup> January, 2025 and identified the following issues for determination:
  - a. Whether this Court has jurisdiction to hear and determine this appeal?
  - b. Whether the Notice of Preliminary Objection dated 17<sup>th</sup> September, 2024 has merit?
8. On the first issue, counsel submitted that this court has jurisdiction over the present appeal and that the Magistrates Court had powers to deal with the land issues and in this case the value was Kshs 550,000/= . Further that there is no division of civil matters in the Magistrate's court. Counsel submitted that in the event this court finds that it has no jurisdiction, it also has the power to withdraw and transfer a case to the subordinate court.
9. On the second issue, counsel submitted that the preliminary objection is only intended to frustrate the Appellant and urged the court to dismiss it with costs and relied on the case of *Daykio Plantations Limited vs National Bank of Kenya Limited & 2 others* [2019] eKLR.

### **Analysis And Determination**

10. The court has looked at the Memorandum of Appeal and the prayers sought and noticed that the Appellant had prayed that the Court do issue an order of stay of execution of the ruling delivered by the Honourable Ruth Chebosio Kefa dated 16<sup>th</sup> August 2023 pending the hearing of and determination of the Appeal.



11. The Appellant had also filed an application dated 14<sup>th</sup> September 2023 seeking similar orders for stay of execution pending the hearing and determination of this Appeal. The Application was heard and dismissed vide a ruling dated 26<sup>th</sup> October 2023.
12. It follows therefore that nothing is pending in this Appeal to be heard and determined. I will not belabor to address my mind as to whether the Preliminary objection has merit or not as there is nothing left to be adjudicated.
13. The net effect is that this Appeal is marked as spent with costs to the Respondent.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 19<sup>TH</sup> DAY OF FEBRUARY 2025.**

**M. A. ODENY**

**JUDGE**

