



Le Pleadi Investment Limited v Athur & another (Environment and Land Appeal 33 of 2023) [2024] KEELC 5991 (KLR) (19 September 2024) (Ruling)

Neutral citation: [2024] KEELC 5991 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL 33 OF 2023
EK MAKORI, J
SEPTEMBER 19, 2024**

BETWEEN

LE PLEADI INVESTMENT LIMITED APPELLANT

AND

ABDULLAHI DAKANE ATHUR 1ST RESPONDENT

MOHAMMED ABDULLAHI SHEIKH 2ND RESPONDENT

(Appeal from the ruling and orders of Malindi Chief Magistrate's Court delivered by Hon. Ong'ondo on 20th June 2023 in Malindi Chief Magistrate's Land Case No. E40 of 2023)

RULING

1. The Appellant had raised a Preliminary Objection dated 15th May 2023 in the Lower Court, challenging the pecuniary jurisdiction of the Court to handle the matter. That the parcel of land No. 6x2, which allegedly had been subdivided into parcels No. 6x2/1 and 6x2/2, was valued over Kshs 200,000,000/- well beyond the pecuniary jurisdiction a Principal Magistrate as provided under Section 7(1) of the Magistrates Court Act, 2015.
2. This is what the Magistrate said in dismissing the Preliminary Objection:

“Having formed the opinion that the said parcel No. 6x2/1 exists. It follows that parcel No. 6x2/2 is not the subject matter of the suit herein but parcel No. 6x2/1, whose existence can only be denied by the aforesaid agencies.

Having ruled that the dispute is over parcel No. 6x2/1 and not parcel No. 6x2/2 in as much as the preliminary objection is based on the value of parcel No. 6x2/2, the same is irrelevant and of no probative value in the circumstances. The objection is dismissed with costs. Leave is granted to appeal the ruling.”



3. In the appeal arising from the ruling, the Appellant contends that the Magistrate was biased and delved into the interlocutory matters, not the Preliminary Objection. He provided final orders on how subdivisions were done before a hearing. He did not consider the issue of the pecuniary jurisdiction raised.
4. On the other hand, the Respondent believes that the issue before the Magistrate was an access road the Appellant had blocked, not the ownership of the adjoining parcels of land or the subdivisions emanating from the original parcel No.6x2.
5. The Court had directed parties to file written submissions. They complied. Significantly, the issue I frame for this Court's decision is whether the Magistrate properly directed himself on the Preliminary Objection before him. The Appellant thinks not. The Respondent believes he properly directed himself to the objection at hand.
6. The role of this Court, although this is an appeal from interlocutory proceedings in the Lower Court, is to re-evaluate the evidence and make its independent conclusion. In the often-cited case of *Okeno v Republic* [1972] EA 32 at 36, the East Africa Court of Appeal stated on the duty of the Court on a first appeal as follows:

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya v. R.*, [1957] E. A. 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (*Shantilal M. Ruwala v. R.*, [1957] E.A. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see *Peters v. Sunday Post*, [1958] E. A. 424.”

7. In this appeal, the Appellant raises the issue that the Trial Court misdirected itself by dismissing a Preliminary Objection raised attacking the pecuniary jurisdiction as conferred to the Court under Article 169 of *the Constitution* and Section 7(1) of the Magistrates Court Act, 2015.
8. When a Court has been invited to look at a matter touching on its jurisdiction, it has to do so instantly. If it finds it has no such powers to hear a matter, it downs tools - see *Nyarangi JA. in Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

9. See also *Cyrus Wanyeri Kanyi & 101 others v Kenya Commercial Bank & another* [2020] eKLR where it was held that:

“In my considered view, where jurisdiction does not lie, a Court has no power to take one more step. It must down its tools once it is of the opinion it does not have jurisdiction. Other



than the issues before me being classic examples of res judicata, I find and hold that in view of the determination by the Supreme Court, this Court does not possess any jurisdiction, and even if the matter is crafted as the Petition herein where it is asserted that the 70th to 102nd Petitioners were not party to the previous suit that is now stated to be pending before the Court of Appeal, this Court lacks jurisdiction and in that regard must down its tools. The Petition is struck out, and each party is to bear their own costs.”

10. A Preliminary Objection rests on the proposition that when raised, its fundamental purpose will have a bearing on disposing of a matter because it raises pure points of law. It also underscores the need for prudent time management as a Court resource by summarily flagging frail and hopeless suits that, if admitted to full trial, will be a waste of judicial time and will not serve the interest of justice. One will not be required to look elsewhere to find an answer as to whether a Preliminary is sustainable or not but look at the pleadings and discover that the suit is a none starter - see the works of Ogola J. in [*DJC v BKL \(Civil Suit E021 of 2021\)*](#) [2022] KEHC 10189 (KLR) (27 June 2022) (Ruling):

“The Supreme Court in *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others* cited the leading decision on Preliminary Objections, *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd.* (1969) EA 696, where the Court held as follows:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is like what used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

8. The Supreme Court in *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others* [2015] eKLR made the following observation as relates to Preliminary Objections:

“... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection— against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”

11. I have looked at the pleadings before the Magistrate, particularly paragraph 5 of the plaint and the prayers sought. The plaintiff in the Lower Court sought an order of mandatory injunction directed at the Defendant to stop blocking an existing road of access, popularly known as Pata Pata Road, registered as portion No.6x2/1 Malindi measuring 0.1043 Ha. or thereabout.
12. The plaint does not mention the Plaintiff seeking ownership of a parcel of land No. 6x2, which allegedly had been subdivided into parcels No. 6x2/1 and 6x2/2. The Magistrate did not consider how



the original parcel was subdivided, so he concluded that it was an issue of evidence from the relevant agencies. It required a hearing. The Preliminary Objection did not raise pure point(s) of law.

13. Evaluating on my own what was before the Magistrate, the issue of pecuniary jurisdiction did not arise. The road of access was and remains the only issue for trial before the Magistrate. The current appeal, then, cannot be sustained. It is premature. The preliminary objection did not domicile on pure points of law, nor could it naturally accrue or be deduced from the pleadings. The issues raised in the preliminary objection needed a probe and further evidence, which could only spring from a hearing.
14. The upshot is that the current appeal is not merited. It is hereby dismissed with costs to the Respondent.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 19TH DAY OF SEPTEMBER 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Nyogesa, for the Appellant

Mr. Otara, for the Respondent

Happy: Court Assistant

