



**Gachigi v Karenju (Environment and Land Appeal E006 of 2024)
[2024] KEELC 13527 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13527 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND APPEAL E006 OF 2024**

**AK BOR, J
NOVEMBER 14, 2024**

BETWEEN

MARY GATHONI GACHIGI APPELLANT

AND

HANNAH WAMBUI KARENJU RESPONDENT

JUDGMENT

1. This appeal relates to the order made by Hon. Nyang'ara Ogoro, Senior Resident Magistrate, in the ruling delivered on 21/3/2024 vide which she upheld the preliminary objection regarding the court's territorial jurisdiction to handle the dispute. The Learned Magistrate found that since the land known as Laikipia/Marmanet/3105 (the suit property) was situated in Rumuruti, the suit should have been filed in Rumuruti and proceeded to dismiss it with costs for want of jurisdiction.
2. In the memorandum of appeal dated 18/4/2024, the Appellant faulted the Learned Magistrate for failing to find that the notice of preliminary objection dated 10/8/2023 raised issues of mixed facts and law which required to be addressed through evidence. Further, that the Learned Magistrate failed to determine whether the suit property situated within Marmanet Region which is 25 km from Rumuruti town and 22km from Nyahururu town fell within the territorial jurisdiction of the Nyahururu Law Courts.
3. The other ground was that the Learned Magistrate erred in dismissing the suit with costs yet both the Chief Magistrates Court at Nyahururu and the Senior Principal Magistrates Court at Rumuruti fell within Laikipia West Constituency in Laikipia West Sub-county and that the nearest court to the suit property was the Chief Magistrate's Court at Nyahururu. Further, that she could only have offered evidence to prove that the suit property was situated outside Rumuruti at a full hearing. The Learned Magistrate was also faulted for failing to find that the sale agreement dated 10/12/2018 relating to the suit property was written before the Chief of Gatero Location within the territorial jurisdiction of the Chief Magistrate's Court at Nyahururu.



4. The Appellant urged the court to set aside the ruling of 21/3/2024 in Nyahururu CM ELC Case No. E027 of 2023 and for this court to direct that the matter be heard before a different magistrate sitting at Nyahururu Chief Magistrates Court or in the alternative, that it be transferred to the Rumuruti Senior Principal Magistrates Court for hearing and determination.
5. The court directed parties to file submissions which it has considered. The Appellant submitted that the Nyahururu Magistrates Court had jurisdiction to hear and determine the matter because the suit property was situated within Marmanet region which was 25 kilometres from Rumuruti town and 22 kilometres from Nyahururu town and that the Learned Magistrate therefore erred by dismissing the suit when it could have struck it out or returned the pleadings filed to the Appellant and directed her to file the suit at Rumuruti Law Courts.
6. She urged that the Nyahururu Magistrates Courts had jurisdiction because the sale agreement which is the subject of the litigation was executed before the area Chief, Gatero Location in Marmanet and not in Rumuruti. The Appellant urged the court to allow the appeal and reinstate the suit for hearing.
7. The Respondent submitted that the suit land was situated at Rumuruti within the local limits of Rumuruti Law Courts and relied on fact that the title over the suit property was issued at the Rumuruti District Land Registry on 6/11/2022. She submitted that Section 12 of the *Civil Procedure Act* required that suits for the recovery of immovable property or for the determination of the rights or interests over immovable property should be instituted within the local limits of whose jurisdiction the property was situated. Further, that the proviso included the court within the local limits of whose jurisdiction the Defendant actually and voluntarily resided, or carried out business or personally worked for gain.
8. The Respondent maintained that the suit property was located in Rumuruti within the local limits of the Rumuruti Senior Principal Magistrates Court. The Respondent maintained that the Learned Magistrate was right in making the finding that she did. Further, that the notice of preliminary objection raised a pure point of law on the issue of the jurisdiction of the trial court.
9. The Respondent relied on *Mukisa Biscuits v West End Distributors Limited* [1960] EA 696 where the court held that a preliminary objection consisted of a point of law which had been pleaded or which arose out of clear implication of the pleadings and if argued as a preliminary point, may dispose of the suit. Examples would include objections to the jurisdiction of the court, plea of limitation or the submission that parties were bound by the contract to refer the dispute to arbitration.
10. The Respondent was emphatic that it was not in dispute where the suit property was situated and that the title deed over the suit property was issued by the Rumuruti District Land Registry hence the issue of jurisdiction was raised purely as a matter of law and that the ruling of the Learned Magistrate should be upheld. The Respondent maintained that the court ought to take judicial notice that a land registry cannot issue a title deed which ought to be issued by another land registry and that the title for the suit property having been issued by the Rumuruti District Land Registry, it was immaterial which town the suit land was closer to. The Respondent maintained that it did not matter where the sale agreement was drawn and the only issue that mattered was the location of the suit property.
11. The issue for determination is whether the court should set aside the orders made in the ruling delivered on 21/3/2024 dismissing the Appellant's claim based on a preliminary objection on the territorial jurisdiction of the trial court. It is not in dispute that the title deed for the suit property was issued by the Rumuruti District Land Registry. Section 12 of the *Civil Procedure Act* provides that a suit for the recovery of immovable property is to be filed in the court within the local limits of whose jurisdiction



the property is situated, subject to the pecuniary jurisdiction or other limitations prescribed by other laws.

12. The Appellant contended that the suit property was situated 22 kilometres from Nyahururu Law Courts and 25 kilometres from Rumuruti Law Courts. The Respondent's position was that the Learned Magistrate did not err in her findings because the title over the suit property was issued by the Rumuruti Land Registry. Without measuring the distances, it is difficult to determine which court between the Nyahururu Law Court and Rumuruti Law Courts was within the local limits of the suit property. In this court's view, this was not a pure point of law.
13. Section 18 of the *Civil Procedure Act* grants this court the discretion to withdraw any suit pending in a court subordinate to it and transfer it for disposal to a court subordinate to it and competent to try or dispose of it. Going by the Respondent's argument that the proper court to dispose of this dispute is the Rumuruti Magistrates Court and in light of the uncertainty as to which of the two courts has jurisdiction over the suit property, it would serve the interests of justice if this suit were transferred to the Rumuruti Law Courts for hearing and determination.
14. The court allows the appeal and sets aside the decision of the Learned Magistrate made on 21/3/2024. The suit is transferred to the Rumuruti Senior Principal Magistrates Court for hearing and disposal.
15. The Appellant is awarded the costs of the appeal.

DELIVERED VIRTUALLY AT NAIVASHA THIS 14TH DAY OF NOVEMBER 2024.

K. BOR

JUDGE

In the presence of: -

Mr. Gakenia Gicheru for the Appellant

Mr. Joshua Magua for the Respondent

