



**Mwanzia & another v Moses (Environment & Land Case E144 of 2021)
[2024] KEELC 13265 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13265 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E144 OF 2021
MD MWANGI, J
NOVEMBER 14, 2024**

BETWEEN

KENNEDY MUTUKU MWANZIA 1ST PLAINTIFF

JEREMIAH NDURUMO NDERITU 2ND PLAINTIFF

AND

MATHEW MOSES DEFENDANT

RULING

(In respect of the Defendant’s application dated 16th July, 2024 seeking to strike out the Plaintiffs’ suit for want of jurisdiction)

Background

1. This Ruling is in respect of the Defendant’s application dated 16th July 2024 brought under the under the provisions of Article 162 of *the Constitution* of Kenya 2010, Section 13 of *Environment and Land Court Act*, 2011, Section 9 of the Magistrates’ Courts Act, 2015 Section 1A, 1B and 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya and all other enabling provisions of the law seeking for orders that;
 - a. This honorable court lacks the jurisdiction to entertain and determine the suit herein.
 - b. The proceedings in ELC Case No. E144 of 2021 be and are hereby struck out for want of jurisdiction.
 - c. The cost of this application be provided for.
2. The application is premised on the grounds that this Court lacks jurisdiction to entertain and determine the present matter as the same falls within the ambit of the matters provided under Section 5 of the Magistrates Court Act, Cap 10 of the Laws of Kenya. It is the Defendant’s position that the



subject matter of the suit falls squarely within the jurisdiction of the Chief Magistrate's Court and therefore continuing proceedings in this court will cause irreparable harm and undue prejudice to him. The Applicant contends that the application raises substantial questions of law regarding jurisdiction that require immediate attention to prevent a miscarriage of justice.

3. The Application is further supported by the Affidavit of Mathew Moses Angwenyi, the Defendant herein in which he reiterates the assertions in support of the application. The Defendant avers that he conducted a recent valuation on the suit property which placed the actual value of the suit property at Kshs. 6,000,000/=. The Applicant therefore contends that the value of the suit property is below the pecuniary jurisdiction of this Court.
4. The Applicant argues that the value of the subject matter places it within the jurisdiction of the Magistrates' Court as the proper court to hear and determine the matter. It is therefore in the interest of justice that this court strikes out these proceedings and, by extension the suit, for want of jurisdiction.

Replying Affidavit

5. The Plaintiffs opposed the application through the Replying Affidavit of Kennedy Mutuku Mwanzia, the 1st Plaintiff herein, deponed on the 31st July, 2024. The Plaintiffs contend that this Honourable Court has unlimited pecuniary jurisdiction by dint of Section 13 of the [Environment and Land Court Act](#) and therefore the court has mandate to hear and determine this suit.
6. They further state that it is more than 2 years since the suit herein was filed and served upon the Defendant/Applicant and that the suit is part-heard with the Plaintiffs having closed their case on 21st June, 2023. Therefore, transferring the suit to the Magistrate's Court would be prejudicial to the Plaintiffs as that would mean that the case begins afresh.
7. The Plaintiffs argue that the application is a calculated attempt to delay the suit herein and frustrate them. It is therefore in the interest of justice that the application herein be dismissed with costs for lack of merit.

Analysis and Determination

8. I have taken into consideration the submissions filed by the parties and judicial decisions cited. In my view the only issue for determination is whether this suit should be transferred to the Subordinate Court.
9. The jurisdiction of this Court flows from Article 162(2) (b) of [the Constitution](#) which is read together with the provisions of Section 13 of the [Environment and Land Court Act](#).
10. I must point out that section 13 of the [Environment and Land Court Act](#) states that this court has original and Appellate jurisdiction to hear and determine all disputes (Emphasis is mine) in accordance with Article 162(2) (b) of [the Constitution](#) of Kenya 2010 and the provisions of this Act or any other law applicable in Kenya relating to environment and Land.
11. The late Justice Majanja while handling a similar issue as the one raised by the Defendant in the application under consideration herein, in the case of Interactive Gaming & Lotteries Limited v Safaricom Limited (Commercial Civil Case E684 of 2021) [2021] KEHC 335 (KLR) (Commercial and Tax) (3 December 2021) (Ruling), cited with approval the sentiments by Githua J., in the case



of Dr Selina Vukinu Ambe v Ketan Shashikant Khatri NRB HCCC No. 171 of 2018 [2020]eKLR, where she held that;

“The other objection taken by the defendant is that the suit ought to have been filed in the Magistrates’ Court which has jurisdiction to hear and determine the plaintiff’s claim and not in the High Court. While as I agree with the defendant that Section 11 of the *Civil Procedure Act* requires that a suit should be filed in the court of the lowest grade competent to try it, this provision in my view cannot be used to challenge the civil jurisdiction of the High Court to entertain and determine suits filed before it. Besides the fact that the provision clearly regulates the filing of suits in subordinate courts, it is pertinent to note that the jurisdiction of the High Court is derived from *the Constitution* of Kenya 2010 which at Article 165 (3) confers on the court unlimited original jurisdiction in both criminal and civil matters.

With reference to the matters at hand, this means that the High Court is constitutionally mandated to hear and determine all civil suits irrespective of their nature or the value of the subject matter. The High Court’s jurisdiction being a creature of *the constitution* which is the supreme law of the land cannot be limited or fettered by any other written law including the *Civil Procedure Act*. In my view, any statute that would purport to limit the High Court’s jurisdiction as conferred by Article 165 (3) would to that extent be unconstitutional by virtue of Article 2 (4) of *the Constitution*.”

12. The above reasoning applies to the jurisdiction of the *Environment and Land Court Act* to hear and determine all disputes in accordance with Article 162(2) (b) of *the Constitution* of Kenya 2010 and the provisions of this Act or any other law applicable in Kenya relating to environment and Land. It is not subject to their nature or the value of the subject matter.
13. Of course the court has the discretion under section 18(1)(a) of the *Civil Procedure Act* on application of the parties or on its own motion to transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same. The discretion must however be exercised with the consideration of the particular circumstances of each case in mind.
14. In the instant suit, the Plaintiffs have already closed their case. Transferring this matter to the Subordinate Court will mean the matter starts afresh. That will be against the overriding objective of the court to facilitate just, expeditious, proportionate and affordable resolution of disputes. In the interest of justice, it is appropriate that this court proceeds with the hearing of the case to its logical conclusion.
15. Consequently, the Defendant’s application is hereby dismissed with costs to the Plaintiffs.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF NOVEMBER 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Ngereso for the Defendant/Applicant

Ms. Wanjiru for the Plaintiffs/Respondents



Court Assistant: Yvette

M.D. MWANGI

JUDGE

