



REPUBLIC OF KENYA



KENYA LAW
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**Real Options Investments Company Limited v Shichende (Environment & Land
Case E030 of 2023) [2024] KEELC 7492 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7492 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E030 OF 2023
MN GICHERU, J
NOVEMBER 13, 2024**

BETWEEN

REAL OPTIONS INVESTMENTS COMPANY LIMITED PLAINTIFF

AND

JOSPHAT ENDENCE SHICHENDE DEFENDANT

RULING

1. This ruling is on the preliminary objection dated 19/5/2023. The objection which is by the defendant is based on the following grounds.
 - i. The value of the subject matter of the suit is admittedly within the jurisdiction of the Magistrates Court at Ngong hence filed in contravention of Section 11 of the [Civil Procedure Act](#).
 - ii. This court is divested of original jurisdiction over this matter in view of Section 11 of the [Civil Procedure Act](#), Section 13 (5) of the ELC Act and Sections 7 and 9 of the Magistrate's Court Act and judicial precedent. For the above reasons, the defendant prays that this suit be struck out with costs and the same transferred to the court with jurisdiction pursuant to Section 18 of the [Civil Procedure Act](#).
2. Vide a plaint dated 18/4/2022, the plaintiff seeks the following orders.
 - a. A permanent injunction restraining the defendant and anybody claiming through him from encroaching on L.R. No. Kajiado/Olchoro-Onyore/11211, suit land.
 - b. A mandatory injunction directing the defendant, his servants, agents or employees to remove the illegal beacons and/or structures erected on the suit land at his own cost.
 - c. General damages for trespass and wanton destruction of the suit property.



d. Costs of this suit and interest.

In the same plaint, it is averred vide paragraph 14 that there is no other suit pending between the parties over the same subject matter.

3. In a written statement of defence dated 19/5/2023, the defendant has revealed that there is indeed a pending suit which is Ngong Magistrate's Court ELC/E005/2021, which is still pending before court. There is no reply to defence denying the existence of the suit at Ngong Law Courts. A copy of the plaint has been filed showing the particulars of the Lower Court suit.
4. Counsel for the parties filed written submissions dated 5/6/2023 and 25/3/2024 respectively. The Plaintiff identified the following issues.
 - i. Whether this court is divested with original jurisdiction to adjudicate over this matter?
 - ii. Whether this court should transfer or strike out this suit if it finds that it should be handled by a Lower Court?
5. I have considered the preliminary objection dated 19/5/2023. I have also considered the entire record. I find that the two issues identified by the plaintiff's counsel will adequately determine the preliminary objection.
6. On the 1st issue, I find that this court has no jurisdiction to determine this dispute for two reasons. Firstly, even though there is no valuation report on record to show the value of the subject matter, the plaintiff is submitting that the jurisdiction of this court is derived from Article 165 of *the Constitution*. The only way the plaintiff would be heard to say that this court has jurisdiction in this matter if it was saying that the value of the subject matter is above the pecuniary jurisdiction of the Magistrates Court at Ngong. Instead, it is saying that since the High Court (and this court being of equal status) has unlimited jurisdiction, then it should hear this case even though the Ngong Court has jurisdiction. It does not work that way. I am in agreement with the defendant's counsel that Section 11 of the *Civil Procedure Act* makes it mandatory that suits be filed in the court of lowest grade competent to try it. It proves as follows.

“Every suit shall be instituted in the court of lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts...”

7. Secondly and more importantly, this dispute involves boundaries of registered land. By virtue of Section 18(2) of the Registered *Land Act*, this court has no jurisdiction to handle a suit concerning boundaries to registered land unless such dispute has been determined by the Land Registrar of the area in which the land is situated. The subsection provides as follows.

“The court shall not entertain any action or other proceedings relating to a dispute as to boundaries of registered land unless the boundaries have been determined in accordance with this section”.

There is no evidence in the pleadings filed by the plaintiff to prove that the land Registrar had already determined the dispute before the suit was filed. Even if the Land Registrar had determined the boundary dispute, it is envisaged by Regulation 40(6) of the Land Registration (General) Regulations,



2017 that after the Land Registrar has determined the boundary dispute, the only way to approach this court is by way of appeal. The sub regulation proves as follows.

“ Any party aggrieved by the decision of the Registrar made under paragraph (5) may, within thirty days of notification, appeal the decision to the court”.

This sub regulation is clear proof that the only jurisdiction that this court has in boundary determination disputes is appellate and not original. Since this suit is commenced by way of a plaint and not an appeal, it is not therefore properly before the court.

8. On the second issue, it is my finding that the Magistrates Court has no jurisdiction either because as we have already seen, only the Land Registrar has jurisdiction. I have seen evidence in form of a report by the officer in charge, survey office, Kajiado West dated 23/11/2023 showing that the disputed land was visited. I have not however seen a final report by the Land Registrar. That would mean that there is no final determination of the dispute. That being the case, it is not fair or just that this dispute should be pending in this court, before the Ngong Magistrates Court and before the Land Registrar. It should be exhausted in one forum before it moves to the next.

For the above stated reasons, I find merit in the preliminary objection dated 19/5/2023 which I uphold and strike out this suit with costs to the defendant.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY 13TH DAY OF NOVEMBER 2024.

M.N. GICHERU

JUDGE

