



REPUBLIC OF KENYA



**Mwamuye v Taifa Poa Homes Limited (Commercial Case E282 of 2023)  
[2025] KEHC 1033 (KLR) (Commercial and Tax) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1033 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E282 OF 2023**

**PM MULWA, J**

**FEBRUARY 27, 2025**

**BETWEEN**

**ANDREW BAHATI MWAMUYE ..... APPELLANT**

**AND**

**TAIFA POA HOMES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This is an appeal from the Ruling of Hon. G. Simatwo, RM/ Adjudicator dated 29<sup>th</sup> September 2023 at the Small Claims Court at Nairobi in SCCCOMM No. E5991 of 2023.
2. In the suit, the Appellant claimed that on 21<sup>st</sup> October 2022, he entered into a sale agreement with the Respondent in respect of a parcel of land situated at Kibali Gardens (Kantafu) excised from L. R. No. Donyo Sabuk/ Komarok/ Block 1/75772. He paid the agreed purchase price of Kshs. 880,000/- on the same date. However, the Respondent failed to effect the registration of the transfer in his favour. He therefore sought a refund of Kshs. 968,000/- the purchase price of Kshs. 880,000/- together with liquidated damages of Kshs. 88,000/-.
3. The Respondent filed a Preliminary Objection dated 5<sup>th</sup> September 2023, on the following grounds:-
  - i. That the Statement of Claim dated 12<sup>th</sup> day of August 2023 is incurably defective in law as it offends the provisions of Section 12 (1) and 14 of the Small Claims *Act No. 2 of 2016* Laws of Kenya.
  - ii. That the Honourable Court lacks Jurisdiction to hear the Statement of Claim dated 12<sup>th</sup> day of August 2023 since the entire claim is premised on an environment and land related dispute which ought to be heard and determined by the Environmental and Land Court.



4. The trial court found that the suit revolved around the sale and purchase of a specific parcel of land located in Machakos and that it therefore lacked the jurisdiction to determine the dispute pursuant to Section 13(5) of the *Small Claims Court Act*.
5. Aggrieved by the decision, the Appellant initiated this appeal through a memorandum of appeal dated 25<sup>th</sup> October 2023, on the following grounds:
  - i. That the learned trial magistrate/ adjudicator erred in law by finding that the Court lacked jurisdiction to determine the dispute before her by dint of Section 13(5) of the *Small Claims Court Act* despite being commercial in nature.
  - ii. That the learned trial magistrate/ adjudicator erred in law by upholding a preliminary objection which raised factual matters that required proving and interrogation to ascertain the truth.
6. The Appellant prays that his appeal be upheld, the Ruling dated 29<sup>th</sup> September 2023 be quashed and set aside, SCCCOMM No. E5991 be remitted to the Small Claims Court for determination on its merits and that costs of the Appeal are awarded to him.
7. The Appeal was canvassed through written submissions. The Appellant and the Respondent filed written submissions dated 26<sup>th</sup> February 2024 and 10<sup>th</sup> April 2024.

#### **Analysis and determination**

8. I have considered the memorandum of appeal, the record of appeal and the parties' respective submissions. This is a first appeal from a decision of the Small Claims Court. Section 38 of the *Small Claims Court Act* provides that:
  - “(1) A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.
  - (2) An appeal from any decision or order referred to in subsection (1) shall be final.”
9. The first ground is that finding that the Court lacked jurisdiction to determine the dispute before her by dint of Section 13(5) of the *Small Claims Court Act* despite being commercial in nature. The Appellant argued that the claim before the trial court was purely a commercial-related claim through which he was seeking refund of the purchase price after the Respondents breached the sale agreement. It asserted that it did not ask the trial court to determine a dispute on either the suit property or possession.
10. The Respondent maintained that the trial court lacked jurisdiction and was correct in its findings. It made mention of the possible defences to the claim and submitted that the determination of the dispute required interpretation of the land sale agreement.
11. On the second ground, the Appellant asserted that the Respondent's PO was improper as it raised matters that required proof and interrogation. However, the Respondent was firm that it raised pure points of law.



12. Section 13 (5) of the *Small Claims Court Act* is explicit that:

“A claim shall not be brought before the Court if the cause of action is founded upon defamation, libel, slander, malicious prosecution or is upon a dispute over a title to or possession of land, or employment and labour relations.”

13. Article 162 of *the Constitution* provides:

- (1) ...
- (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
  - (a) employment and labour relations; and
  - (b) the environment and the use and occupation of, and title to, land.
- (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

14. Section 13 of the *Environment and Land Court Act* provides that:

“ 13. Jurisdiction of the Court

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes-
  - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - (b) relating to compulsory acquisition of land;
  - (c) relating to land administration and management;
  - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - (e) any other dispute relating to environment and land. (...must be construed in accordance with the purpose of Parliament stated under Article 162 and the purpose of the Act as stated in the preamble).



15. In Joel Kyatha Mbaluka t/a Mbaluka & Associates Advocates v Daniel Ochieng Ogola t/a Ogola Okello & Co Advocates (Civil Appeal No. 250 of 2017) [2019] KECA 504 (KLR) (19 July 2019) (Judgment) the Court of Appeal stated as follows:

“(12) We reiterate the position taken in Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna (supra), that in construing whether the ELC had jurisdiction in a matter, the consideration must be the dominant issue in the dispute and whether that issue relates to the environment and the use and occupation of, and title to, land.”

16. Guided by the above, the dominant dispute in the suit before the trial court was on a land sale agreement. Therefore, it involves the interests (title) in the land and falls within the jurisdiction of the ELC. Therefore, both the first and second grounds of appeal fail.

17. In conclusion, therefore, I find that the appeal is without merit and it is hereby dismissed with costs.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI**

**This 27th day of February 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

Ms. Kariuki for Appellant

Ms. Nyamwaro h/b for Mr. Mwaura for Respondent

Court Assistant: Carlos

