



Mkonga aka Mohamed Chimba Mbeo Mkonga v Weda & 3 others (Environment & Land Case 87 of 2017) [2023] KEELC 15691 (KLR) (21 February 2023) (Ruling)

Neutral citation: [2023] KEELC 15691 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 87 OF 2017
NA MATHEKA, J
FEBRUARY 21, 2023**

BETWEEN

CHIMBA MBEO MKONGA AKA (MOHAMED CHIMBA MBEO MKONGA) PLAINTIFF

AND

**CHENGO NDORO WEDA 1ST DEFENDANT
CHRISTOPHER NDORO 2ND DEFENDANT
NDORO MTENGO 3RD DEFENDANT
KALOLENI DISTRICT LAND CONTROL BOARD 4TH DEFENDANT**

RULING

1. The 4th defendant raised a preliminary objection that the suit property is situated at Kinunguni area within Kilifi County which has a well established Environment and Land Court at Malindi High Court hence the jurisdiction of this matter falls in Malindi Environment and Land Court and not Mombasa Law Courts and applies for the suit to be transferred there for hearing and determination.
2. The plaintiff opposed the objection and stated that, the said parcel of land is situated at Kinunguna and not Kinunguni as contained in the preliminary objection and it is approximately 20 kilometers away from Mombasa court house as against 120 kilometers from Kilifi Law Courts. That, the preliminary objection will violate the fundamental principles of not only the Plaintiff but the defendants as well who reside within a radius of 20 kilometers from the court house in Mombasa to access justice.
3. The court has carefully considered the grounds raised in the preliminary objection by the 4th defendant dated August 14, 2017, the preliminary objection by the plaintiff dated August 29, 2017 and plaintiff's submissions dated November 8, 2022 and the issues for determination is whether or not this court has territorial jurisdiction to hear and determine this matter.



4. In the case of Mukhisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd, (1969) EA 696, the Court held as follows:

A preliminary objection is in the nature of 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 the judicial discretion. The improper raising of points of fact by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.”

5. The matter herein is in reference to the territorial jurisdiction of the court and that falls within matters appertaining to law.

6. It has long been settled that where the court finds it has no jurisdiction in a matter before it, then it downs its tools. In the celebrated Motor Vessel “Lillians” vs Caltex Oil Kenya Ltd (1989) KLR I Nyarangi JA held thus;

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 held the opinion that it is without jurisdiction.”

7. The Kenyan Constitution 2010, under articles 162 (2) (b), as read with articles 165 (5) (b) of *the Constitution*, 2010, and section 13 of *Environment and Land Court Act* No. 19 of 2011 confers this court with unlimited original and appellate jurisdiction in disputes relating to “the environment and the use and occupation of, and title to land.”

8. Inter alia it follows that the Environmental Land Courts have jurisdiction to deal with all land matters throughout Kenya. However, section 12 of the *Civil Procedure Act* cap 21 provides for guidelines on choosing territorial jurisdiction. When filing matters. It provides thus; -

‘Subject to the preliminary or other limitations prescribed by any law,

- a. for the recovery of immovable property; with or without rent or profits;
- b. for the partition of immovable property;
- c. for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- d. for the determination of any other right to or interest in immovable property;
- e. for compensation for wrong to immovable property;
- f. for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate: Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the Defendant may, where the relief sought be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the Defendant actually and voluntarily resides or carries on business, or personal works for gain.’



9. Section 13 provides; -

Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate, provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such court.”

10. The 4th defendant contention is that the suit property is located within Kinunguni area within Kilifi County reasons for which the Malindi Environment and Land Court is the correct forum for the matter to be heard. The Plaintiff however pointed out that the suit parcel was situated at Kinunguna an area that is approximately 20 Kilometers from Mombasa Court house as against 120 Kilometers from Mombasa. From documents on record the property is situated a Plot 242 Kinunguna area in Kilifi County which is 22.4 km from Mombasa High Court. However, it is in Kilifi County which is served with Malindi Environment and Land Court is Kilifi County. Given that the suit property is located within Kilifi County Government, subject to Section 12 the correct forum is the Malindi Environmental Court. I find that the preliminary objection is merited and I transfer this matter to the Environment and Land Court Malindi for hearing and determination. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 21ST DAY OF FEBRUARY 2023.

N.A. MATHEKA

JUDGE

