



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

HCCA NO.13 OF 2014

TABITHA WAMBUI MUNYAO.....1ST APPELLANT

GEOFFREY KANIA MUNYAO.....2ND APPELLANT

ISAAC NJENGA MUNYAO.....3RD APPELLANT

PETER GITHINJI MUNYAO.....4TH APPELLANT

JOHN MURUGE MUNYAO.....5TH APPELLANT

CHARLES KINUTHIA MUNYAO.....6TH APPELLANT

SAMUEL NDUNGU MUNYAO.....7TH APPELLANT

JAMES NGOTHO MUNYAO.....8TH APPELLANT

VERSUS

PETER NGUGI KAINAMIA.....1ST RESPONDENT

JOHN MURAYA KAINAMIA.....2ND RESPONDENT

JUDGMENT ON APPEAL

(Appeal against issuance of an injunction; injunction issued by magistrate's court; various issues raised including issue whether magistrates court had jurisdiction in the matter; jurisdiction of magistrates to hear disputes under the Registered Land Act ; RLA prescribing Kshs. 500,000/= as limit; whether a magistrate who held a higher pecuniary jurisdiction under the Magistrates Court Act, could hear a dispute within his/her pecuniary jurisdiction; held that test to apply is the test in the RLA not the Magistrates Court Act; magistrates court did not have jurisdiction in the matter as subject matter went beyond kshs. 500,000; appeal allowed; suit before trial magistrate struck out with costs)

1. This is an appeal against an order of injunction issued in favour of the respondents in Nyahururu Chief Magistrates Civil Case No. 34 of 2012. Various grounds of appeal have been raised but before I address these, I think it is necessary that I give a background to the suit that led to this appeal.

2. The suit was commenced by way of plaint which is stamped 5 March 2011 although it appears to me that the suit was actually filed on 5 March 2012 in the Chief Magistrate's Court at Nyahururu. The plaintiffs (who are the respondents in this appeal) pleaded that they are the owners of the land parcel Nyandarua/OI Kalou South/1698. They sued the defendants on the basis that the defendants have entered the land and were utilizing it to the detriment of the plaintiffs. In the suit, they asked for orders of permanent injunction against the defendants. Together with the plaint, the plaintiffs filed an application for injunction seeking to restrain the defendants from the suit property. Interim orders of injunction were granted pending inter partes hearing of the suit.

3. The appellants (as defendants), entered appearance and filed defence. They also filed a response to the application for injunction. Their case was that they entered the suit property in the year 1966 and have continued to be in possession. They pleaded that the case of the plaintiff is statute barred for they have been on the land for more than 12 years. They pleaded a previous suit Nairobi HCCC No. 1994 of 1979. They also raised issue that the land is of a value that was beyond the pecuniary jurisdiction of the court. A preliminary objection was filed on 29 March 2012 which raised the issue of pecuniary jurisdiction and also raised issue that the suit is time barred. I have seen that the preliminary objection was argued but it seems as if the objection was confined to whether or not the court had the requisite pecuniary jurisdiction. The court in a ruling, held that it had the requisite pecuniary jurisdiction and could hear the matter. No formal appeal was filed against that decision.

4. The preliminary point having been sorted, the application for injunction was heard inter partes. In their replying affidavit, the appellants again raised the issue of pecuniary jurisdiction and averred that they have continuously been in possession. They stated that in the previous suit, Nairobi HCCC No. 1994 of 1979 which was a suit against their father for the suit property, judgment was delivered on 29 April 1999, against their father, but that they have continued being in occupation. They raised the issue of limitation. In a ruling delivered on 22 January 2014, the trial magistrate allowed the application for injunction. It is that ruling which is the subject of this appeal.

5. The memorandum of appeal has raised 10 grounds as follows :-

1. That the learned magistrate erred in law and in fact by failing to consider the issue of pecuniary jurisdiction that had been raised by the appellants.

2. That the learned magistrate erred in law and in fact in failing to consider the grounds pleaded by the appellants in their replying affidavit dated 29th March 2012.

3. That the learned magistrate erred in law and in fact in failing to consider that the appellant had been in possession of suit land since 1966 and for more than 12 years enjoyed quiet and uninterrupted possession of the same and the orders issued would have the effect of disturbing the status quo prior to the filing of the suit.

4. That the learned magistrate erred in law and in fact in failing to consider the evidence by the appellants that the original suit land had been subdivided without their knowledge and/or consent.

5. That the learned magistrate erred in law and in fact in failing to appreciate that the judgment relied upon by the respondents was time barred under the Limitation of Action Act and other provisions of law.

6. That the learned magistrate erred in law and in fact in failing to consider the rules of natural justice and equity which play a paramount base in this case.

7. That the learned magistrate erred in law and in fact by failing to consider and/or apply the law accordingly and more specifically the law and rules on temporary injunction and further erred in giving final orders in this suit as opposed to temporary orders.

8. That the learned magistrate erred in law and in fact in making a finding that respondents had a prima face case when they did not have any such case before the court.

9. That the learned magistrate erred in law and in fact in granting the orders sought by the respondents in their application whose effect was to give possession of the suit land to the respondents before the suit was heard and determined.

10. That the learned trial magistrate erred in law and in fact in granting the respondents orders of mandatory nature which were not directly sought with the result that the respondents would move and evict the appellants during the pendency of the suit.

6. In their prayers, the appellants want the ruling of 22 January 2014 set aside.

7. I have considered the matter and the submissions of counsel.

8. Jurisdiction has yet again been raised and I think I first need to deal with this point, for if I decide that the trial court had no jurisdiction, then the entire proceedings will be a nullity. This is because jurisdiction is fundamental and goes to the core of any proceedings. Without jurisdiction, the proceedings have no integrity and have to be declared null and void. I can do no better than to repeat the oft quoted dictum of Nyarangi J, in the case **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd (1989) KLR 1**, where he stated : - "*Jurisdiction is everything. Without it, a court has no power to make one more step.*"

9. The said dictum was cited with approval by the Supreme Court in the case of **Re Interim Independent Electoral Commission Supreme Court, Advisory Opinion, Constitutional Application No. 2 of 2011, (2011) eKLR**, where the court added that :-

"[29]Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent...[30] The Lillian 'S' case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution."

10. In our case the suit herein was filed before the Chief Magistrates Court on 5 March 2012. The land parcel was registered under the Registered Land Act (RLA) (CAP 300). The RLA was repealed by the Land Registration Act, Act No. 3 of 2012, which commenced on 2 May 2012. Thus at the time the suit was filed, the applicable law was the RLA. In so far as jurisdiction was concerned, the RLA covered this in Section 159 of the statute which provided as follows :-

159. *Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate's Court, or, where the dispute*

comes within the provisions of section 3 (1) of the Land Disputes Tribunals Act in accordance with that Act.

11. Magistrates did have jurisdiction to hear cases falling under the Registered Land Act, but their jurisdiction as prescribed by the Act, was limited to a subject matter with a pecuniary value of twenty five thousand pounds (Kshs. 500,000/=) and no more. But we know that certain magistrates have a higher pecuniary jurisdiction as given in the Magistrate's Courts Act, which goes upto Kshs. 7 Million then, and even currently. What test therefore was to be applied " Was it the test in the Registered Land Act, or the test in the Magistrates Court Act " I answer this question by stating that the applicable test was the test given in the Registered Land Act and not that of the Magistrates Court Act.

12. Why do I say so " The jurisdiction of Magistrates in civil cases is donated by Section 5 of the Magistrates' Courts Act (CAP 10) which provides that "*subject to any other written law*" Magistrates can hear civil disputes up to certain pecuniary limits depending on the rank of the Magistrate. Note that this jurisdiction is subject to "any other written law." The Registered Land Act, must be considered to have been "other written law" and therefore it is the provisions of the Registered Land Act, on jurisdiction, which must be taken to override the provisions of the Magistrates Court Act. The pecuniary limit of the individual magistrate donated by Section 5 of the Magistrates Courts Act was therefore irrelevant. What was relevant was whether the subject matter of the dispute went beyond the threshold of Kshs. 500,000/= and if it did, then the Magistrates Courts could not have had jurisdiction. In our case, the trial magistrate used the test of the Magistrates Courts Act, and not the test of the Registered Land Act, which was clearly erroneous.

13. I have gone through the proceedings of the lower court file and have noted that a valuation of the property No. 174 from which the suit property emerged from upon its subdivision, was valued at Kshs. 12 Million. That property if it exists is of 12.97 hectares. The suit property which is the parcel No. Nyandarua/OI Kalou South/1698 measures 10.30 hectares. It follows that if property measuring 12 hectares or so is valued at about Kshs. 12 Million, then property measuring 10.30 hectares, being a subdivision of the same land, cannot be said by any stretch of imagination to be of a value that is of Kshs. 500,000/= and below.

14. It is clear to me that the suit was filed in a court which had no jurisdiction in the first place. The result is that even the order of injunction, which is the subject matter of this appeal, was made without jurisdiction. Having been made without jurisdiction, it cannot be of any effect. On that ground alone this appeal must succeed.

15. But even if the magistrate had jurisdiction, I think if he had applied his mind correctly, he would not have allowed the application for injunction. There was doubt as to the strength of the plaintiffs' case given the defence of limitation raised by the defendants. In a matter such as this the court ought to have considered the balance of convenience which lay with the status quo ante being maintained. From the record, the only conclusion I can reach is that it was the defendants/appellants who were in possession of the suit properties. Thus if I was to consider the merits, I would have allowed this appeal.

16. However my main holding remains to be that the Magistrates Court had no jurisdiction in the first place. Having seen for myself that the matter was before a court without jurisdiction, I will go further and strike out the suit Nyahururu Chief Magistrates Civil Suit No. 34 of 2012 with costs. All orders made in the said suit are hereby nullified. It is ordered that the parties do revert back to their respective positions as they were before the commencement of the said suit.

17. The appellants will have costs of this appeal and the costs of the suit filed at the Magistrates Court.

18. Orders accordingly.

Dated signed and delivered in open court at Nakuru this 22nd day of October 2015.

MUNYAO SILA

JUDGE

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In presence of:

Mr. Lawrence Karanja holding brief for Mr Waiganjo Mwangi for appellants

Mr Peter Chege holding brief for Mr Joel Sigilai for respondents

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU



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