



Case Number:	Civil Appeal 92 of 2017
Date Delivered:	04 Dec 2018
Case Class:	Civil
Court:	High Court at Nakuru
Case Action:	Ruling
Judge:	Dalmas Omondi Ohungo
Citation:	Agrey Ambenje Wali v Charles Omondi Agoro & 2 others [2018] eKLR
Advocates:	Mr Ojo h/b for Mr Machage for the Appellant/applicant Ms Nancy Njoroge h/b for Mr Gai for the Respondents/respondents
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	Nakuru
Docket Number:	-
History Docket Number:	-
Case Outcome:	Notice of Motion allowed
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

HIGH COURT CIVIL APPEAL NO. 92 OF 2017

AGRREY AMBENJE

WALI.....APPELLANT

VERSUS

CHARLES OMONDI AGORO.....1ST

RESPONDENT

BILHA MUTOLA LITUNDA.....2ND

RESPONDENT

MARTHA A. OWINO (Suing for and on behalf of WENSCO SELF HELP GROUP).....3RD RESPONDENT

RULING

1. This ruling is in respect of appellant/applicant's Notice of Motion dated 2nd July 2018. The applicant seeks an order that this matter be transferred back to the High Court for hearing and determination. The application is supported by an affidavit sworn by the appellant/applicant. He deposed that he filed a Memorandum of Appeal in the High Court on 19th July 2017 and appeared before Hon. Lady Justice Korir on 9th November 2017 who transferred the matter to the Environment and Land Court. He further stated that the respondents have severally raised the argument that this court has no jurisdiction and added that he feels that he may not get justice before this court.

2. The respondents responded to the application through a replying affidavit sworn by the 1st respondent. He deposed that although the appellant knew that the case concerned officials of a welfare group, he consistently mentioned land and therefore the judge referred the matter to this court in the presence of the appellant who raised no objection.

3. Both sides relied entirely on the affidavits and urged the court to render a ruling.

4. According to the Memorandum of Appeal herein, the appeal is against the judgment and decree of the Chief Magistrate's Court Nakuru (Hon. L. Gicheha SPM) delivered on 12th July 2017 in Nakuru CMCC No. 584 of 2016). There is on record a Record of Appeal but it appears to have been filed by counsel for the respondents. Nevertheless, the appellant filed Notice of Motion dated 9th November 2017 whose annexures confirm all the essential aspects of the record of appeal filed by the respondents. A perusal of both the annexures to the aforesaid application and the record of appeal show that the appellant was defendant while the respondents were plaintiffs in the subordinate court case. The respondents averred in the plaint that the appellant was interfering with an entity known as Wensco Self Help Group. They therefore sought judgment against the appellant for:

a. A permanent injunction restraining the defendant from purporting to be chairman Wensco Self Help Group and or interfering with the group or its elected officials in any way whatsoever.

b. Costs of the suit and interests.

c. Any other and or further relief as the honourable court may deem fit and just to grant.

5. In his statement of Defence the appellant averred inter alia that the subordinate courts case was a cover up of an intention to grab land parcels numbers Kampi Ya Moto/Menengai Block 1/1388 and 1389 (Mangu). He urged the subordinate court to dismiss the

case.

6. Upon hearing the case, the subordinate court granted judgment as prayed in the plaint. Essentially therefore, the subordinate court restrained the appellant permanently from purporting to be chairman of Wensco Self Help Group and from interfering with the group or its elected officials. It is thus clear that the case before the subordinate court and the appeal from it purely concern issues of membership and management of Wensco Self Help Group.

7. Jurisdiction of this court is provided for under **Articles 162** of the **Constitution** as follows:

162. System of courts

(1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).

(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).

8. Pursuant to the aforesaid constitutional provisions, Parliament enacted the **Environment and Land Court Act No. 19 of 2011**. **Section 4** of the Act establishes this court while **Section 13** thereof provides in part as follows:

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.

(3) ...

(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court. ...

9. It follows therefore that jurisdiction of the court, whether appellate or otherwise, is limited to disputes relating to the environment and the use and occupation of and title to land. The appeal exclusively deals with issues of membership and management of

Wensco Self Help Group. Neither the appeal nor the proceedings that originated it concern the use and occupation of land or title to land. I therefore find that the application before the court has merit.

10. The respondents have blamed the appellant for misleading the court into transferring the matter to this court. The record indeed shows that when he appeared before the judge on 9th November 2017, Mr Machage made reference to some parcels of land being excised. The appellant therefore triggered the order that resulted in the matter being referred to this court. For that reason, the appellant will bear costs of the application.

11. In the end, the appeal herein is hereby transferred back to the High Court at Nakuru for hearing and determination. Costs of Notice of Motion date 2nd July 2018 shall be borne by the appellant.

Dated, signed and delivered in open court at Nakuru this 4th day of December 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Ojo holding brief for Mr Machage for the Appellant/applicant

Ms Nancy Njoroge holding brief for Mr Gai for the Respondents/respondents

Court Assistants: Gichaba & Lotkomoi



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