



REPUBLIC OF KENYA



**KENYA LAW**  
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**Laude v Omuranga (Civil Suit E403 of 2020) [2023] KEHC 3798 (KLR)  
(Commercial and Tax) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3798 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E403 OF 2020  
FG MUGAMBI, J  
APRIL 28, 2023**

**BETWEEN**

**KLAUS DIETER LAUDE ..... PLAINTIFF**

**AND**

**CATHERINE AWINO OMURANGA ..... DEFENDANT**

**RULING**

1. The plaintiff instituted this suit against the defendant vide a plaint dated 5<sup>th</sup> October 2020. The plaintiff sought a declaration that his contract with the defendant had been rescinded due to breach of contract by the defendant. The plaintiff also sought to be put in possession of the suit property and a permanent injunction against the defendant relating to the plaintiff. The defendant entered appearance and filed a statement of defence on 23<sup>rd</sup> November 2020. Simultaneously with the defence the defendant raised a preliminary objection citing the following grounds;
  - i. That this Honourable Court lacks jurisdiction to hear and determine this suit.
  - ii. That this suit is frivolous, vexatious and an abuse of the court process
  - iii. That the plaintiff has only served the police with a court order but failed to serve the defendant with any suit document.
2. In his response the plaintiff observed that the court was clothed with the inherent jurisdiction to hear and determine the matter. The plaintiff further contended that the suit had been instituted for the main aim of recovering the medical equipment that he purchased. The plaintiff stated that there was breach of contract on the part of the defendant and on that basis the plaintiff had established locus standi.



### **Analysis and determination**

3. I have considered the rival cases put forward by the parties. The main issue is whether the preliminary objection is sustainable. The objection is premised on the ground that the court lacks jurisdiction to hear and determine the matter. It is not clear on what basis the objection is made but be that as it may, it is trite that this court's jurisdiction flows from the *Constitution*, statute or both. This was held in the case of *Suzzane Achieng Butler & 4 others v Redhill Heights Investments Limited & another* [2016] eKLR
4. This court derives its jurisdiction from Article 165(1) of the *Constitution* and more specifically Article 165(3) which provides in part that the High Court shall have unlimited original jurisdiction in criminal and civil matters and any other jurisdiction, original or appellate, conferred on it by legislation.”
5. The matter before the court is a civil claim based on breach of contract. The prayers sought by the plaintiff relate to restitution of property illegally under the possession of the defendant as well as other declaratory orders. The defendant has raised a defense which denies the claim stated by the plaintiff. This is the contest which the court is called upon to determine.

### **Disposition and orders**

6. Consequently, I find that the court has jurisdiction to hear and determine the suit and that the suit is meritorious and properly before the court. The defendants Preliminary Objection is dismissed with costs.
7. Finally, having looked at the nature of the issues before the Court, I am of the considered opinion that this is a dispute suitable for court annexed mediation. I therefore direct that the matter be mentioned before the Deputy Registrar, Mediation on 3<sup>rd</sup> May 2023 for purposes of exploring an expeditious settlement through mediation. The matter shall be mentioned before this Court 30 days thereafter, on 5<sup>th</sup> June 2023 for a progress update and further directions.

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

**THIS 28TH DAY OF APRIL 2023**

**F. MUGAMBI**

**JUDGE**

