



**Teachers Service Commission v Kariuki (Environment and Land Appeal  
E033 of 2022) [2023] KEELC 17055 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17055 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT AND LAND APPEAL E033 OF 2022**

**YM ANGIMA, J**

**APRIL 27, 2023**

**BETWEEN**

**TEACHERS SERVICE COMMISSION ..... APPELLANT**

**AND**

**GEOFFREY NGARUIYA KARIUKI ..... RESPONDENT**

**RULING**

**A. Introduction and Background**

1. This is an appeal against the ruling and order of Hon Charles Obulutsa (CM) dated December 2, 2020 in Nyahururu CM ELC No E060 of 2021 – Geoffrey Ngaruiya Kariuki v Teachers Service Commission. By the said ruling, the trial court dismissed the appellant’s application dated July 15, 2022 seeking the setting aside of the default judgment entered against it on February 17, 2022 together with all consequential orders.
2. The material on record shows that *vide* a plaint dated July 30, 2021 the respondent sought, *inter alia*, damages for breach of contract, damages for trespass and payment of various amounts of money on account of alleged rent arrears and the cost of partitioning the demised premises at which the appellant was a tenant. The lease between the parties was said to have been for a period of 5 years and 6 months with effect from September 1, 2014. It was contended by the respondent that despite the lease having expired about March, 2020, the appellant had failed to vacate the demised premises and it was still in occupation without making payment of any rent. The record shows that an *ex parte* judgment was entered against the appellant on account of the said suit.
3. The appellant was aggrieved by the order dismissing its application dated July 15, 2022 for setting aside the *ex parte* judgment hence it proceeded to file the instant appeal.
4. During the pendency of the appeal the appellant filed a notice of motion dated February 6, 2023 under article 159 of the [Constitution](#) of Kenya 2010, section 3A of the [Civil Procedure Act](#) (cap 21),



order 42 rule 6(1) & (8), order 50 rule 1 of the [Civil Procedure Rules](#), 2010, section 21(1) & (3) of the [Government Proceedings Act](#) (cap 40) and all enabling provisions of the law seeking stay of execution of the *ex parte* decree passed by the trial court pending the hearing and determination of the appeal. It was contended that the appeal raises weighty and substantial issues and that it may be rendered nugatory should execution proceed since the respondent may not be able to refund the decretal amount once paid.

## **B. The Respondent's Preliminary Objection**

5. The respondent filed a notice of preliminary objection dated February 24, 2023 objecting to the appeal and application for stay on the basis that this court had no jurisdiction to entertain the appeal under section 13 of the [Environment and Land Court Act](#) (ELC Act) and article 162(2) (b) of the [Constitution](#) of Kenya.

## **C. The Appellant's Supplementary Affidavit**

6. Pursuant to leave granted by the court, the appellant filed a supplementary affidavit sworn by Patrick Mwai on March 3, 2023 in response to the respondent's preliminary objection. It was contended that *vide* a plaint dated July 30, 2021 filed in Nyahururu CM ELC No E060 of 2021, the respondent sought various reliefs and damages with respect to the appellant's occupation of the demised premises on LR No 3777/279/15 in Ol Kalou Town. It was stated that the respondent's bill of costs was assessed and certified in the same file being CM ELC E060 of 2021 hence an appeal could only lie to the ELC and not the High Court as provided for under section 26(4) of the [ELC Act](#).

## **D. Directions on Submissions**

7. When the matter came up for directions, it was directed that the respondent's preliminary objection shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the respondent's submissions were filed on March 21, 2023 whereas the appellant's submissions were filed on March 24, 2023.

## **E. The Issue for Determination**

8. The court has considered the material on record and the respondent's preliminary objection. The sole issue for determination is whether or not this court has jurisdiction to entertain the instant appeal and the application for stay pending appeal.

## **F. Analysis and Determination**

9. There is no doubt that the jurisdiction of a court flows from the establishing statute, the [Constitution](#) or any other law or regulation having the force of law. In the case of [Samuel Kamau Macharia & another v Kenya Commercial Bank Ltd & 2 others](#) [2012] eKLR the Supreme Court held that:

“A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings. This court dealt with the question of jurisdiction extensively in, *In the Matter of the Interim Independent*



*Electoral Commission* (applicant), Constitutional application number 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

10. It is evident from the material on record that it is the Respondent who chose the forum of adjudication of his dispute with the appellant. He is the one who chose to file his suit before the Chief Magistrate’s court as CM ELC No E060 of 2021 and all proceedings were conducted by the Chief Magistrate sitting as an environment and land court pursuant to the provisions of section 26(3) of the [ELC Act](#). The said sub-section stipulates that:

“The Chief Justice may, by notice in the gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.”

11. Further, section 26(4) of the same Act stipulates as follows:

“(4) Appeals on matters from the designated magistrate’s courts shall lie with the environment and land court.”

12. The court is of the opinion that its appellate jurisdiction in this case is expressly conferred by section 26(4) of the ELC Act since it is not sitting in its original jurisdiction under section 13(1) of the ELC Act. The court is further of the opinion that appeals from decrees and orders passed by magistrate’s courts gazetted pursuant to section 26(3) of the ELC Act cannot be heard by the High Court. An appeal can only lie to the High Court against a decree or order passed by a magistrate’s court in exercise of its civil or criminal jurisdiction under the [Magistrates Courts’ Act](#).

13. If the respondent’s objection were to be followed to its logical conclusion, then it would mean that the trial court had no jurisdiction to entertain his claim in the first instance as an environment and land court under section 26(3) of the ELC Act. In the event, only the Chief Magistrate’s court sitting as a civil court would be competent to entertain the claim. The consequence of this may well be that the respondent’s decree in Nyahururu CM ELC No E060 of 2021 was a nullity. However, this is a point which the respondent may be at liberty to pursue in the appeal.

14. The court has considered the Court of Appeal case of [Co-operative Bank of Kenya Ltd v Patrick Kangethe Njuguna & 5 others](#) [2017] eKLR which was cited by both parties. That case is clearly distinguishable from the instant case in that the instant case is solely concerned with whether or not this court has appellate jurisdiction over the order of the Chief Magistrate’s Court sitting as a land court in CM ELC No E060 of 2021. As pointed out earlier, this court is not assuming or exercising original jurisdiction over the dispute between the parties. In fact, in entertaining the appeal pursuant to section 26(4) of the ELC Act, the court may even determine whether or not the trial court had jurisdiction to entertain the suit in the first place.

15. The upshot of the foregoing is that the court finds no merit in the respondent’s preliminary objection to the jurisdiction of the court to entertain the appeal. Accordingly, the court makes the following orders for disposal of the matter:

- a. The respondent’s notice of preliminary objection dated February 24, 2023 is hereby overruled with costs to the appellant.



- b. The appellant's notice of motion dated February 8, 2023 for stay pending appeal shall be canvassed through written submissions.
- c. The parties shall file and exchange their respective submissions on the application within 28 days from the date hereof with each side taking 14 days.
- d. The appeal shall be mentioned on May 31, 2023 to confirm compliance and fix a ruling date.
- e. The interim stay of execution is hereby extended until delivery of the ruling on stay or until further orders of the court.

Orders accordingly.

**RULING DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 27<sup>TH</sup> DAY OF APRIL, 2023.**

In the presence of:

Mr. Langat holding brief for Mr. Ochieng' for the Appellant

Mr. Maina Ngaruiya holding brief for Mr. Kunini for the Respondent

**C/A - Carol**

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**Y. M. ANGIMA**

**JUDGE**

