



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mutemi v Dickson Riri Mojo t/a Dikwa Auctioneers (Miscellaneous Civil Application E206 of 2022) [2023] KEHC 20740 (KLR) (Civ) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20740 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**MISCELLANEOUS CIVIL APPLICATION E206 OF 2022**

**JN MULWA, J**

**JULY 27, 2023**

**BETWEEN**

**MICHAEL MUTINDA MUTE MI ..... APPLICANT**

**AND**

**DICKSON RIRI MOJO T/A DIKWA AUCTIONEERS ..... RESPONDENT**

**RULING**

1. Before the court is the 2<sup>nd</sup> respondents application dated October 7, 2022, grounded upon provisions of article 162 (2) of the *Constitution of Kenya*, section 13 of the *Environment and Land Court Act*, and Rule 7 of the *Civil Procedure Rules* among other enabling provisions of the law.
2. The applicant seeks orders:
  1. Spent
  2. Spent
  3. That this honourable court do strike out in its entirety the suit (HCC MISC/E206/2022) as this court has no jurisdiction to entertain it, being the main ground for the application.
3. The grounds for the application are that the 1<sup>st</sup> respondent David Mburu Kihara is the landlord in premises known as Dagoretti/Riruta/6229 while the applicant in the Suit Michael Mutinda Mutemi is the tenant therein, wherein their dispute on rent arrears was filed at the Rent Restriction Case No E194/2022. Upon hearing the dispute, the tribunal issued several orders among them and relevant to this application are that the tenant was directed to pay the outstanding arrears of rent then standing at Kshs 22,500/-, and in default, the landlord was granted leave to levy distress in order to recover the outstanding arrears through a Licenced auctioneer.



4. Following the tenants default, the 2<sup>nd</sup> respondent and applicant, Dikwa Auctioneers levied distress upon the tenant's properties. Of relevance is that the tenant did not appeal against the tribunals orders or applied to set them aside. It is therefore clear from the above short analysis that this application (Suit) emanated from a dispute between a landlord and a tenant in respect of a residential property.
5. In opposing the application, the tenant filed a replying affidavit sworn on the February 25, 2023 as well as submissions dated February 27, 2023.
6. The parties were directed to highlight their submissions on the July 4, 2023 but the tenant, though served failed to attend court. Upon orders of this court, the tenant was served afresh to attend court to highlight his submissions on the July 24, 2023 but did not attend court. The 2<sup>nd</sup> respondent therefore argued his application ex parte orally.
7. I have considered the parties pleadings, affidavits and Submissions. There is no doubt that this application arose from a dispute over rent arrears in a controlled tenancy between the two parties. Upon being dissatisfied with the tribunal's orders, the tenant, ought to have appealed to the court with jurisdiction, but instead decided to bring a fresh Suit – this application in the High Court.
8. I agree fully with the 2<sup>nd</sup> respondent that this court lacks jurisdiction to entertain the suit.  
Section 13 of the *Environment and Land Court Act* donates jurisdiction to deal with such matters to the said court. Further article 162 (2) of the *Constitution* provides that the Environment and Land-ELC - court shall have power to hear and determine such disputes between a landlord and a tenant to the Environment and Land Court.
9. Additionally, section 8 (2) of the *Rent Restriction Tribunal* provides that an appeal shall lie to the Environment and Land Court from any such decision, determination or order.  
Further section 32 thereof provides “Where jurisdiction or power to deal with any matter is conferred by this Act on a Tribunal, no proceedings with respect to that matter shall be taken in any court except by way of appeal under section 8 (2)”
10. In the case *Motor Vessel “Lillian S” vs Caltex Oil (Kenya)* (1989)eKLR, the court rendered that without jurisdiction, any decision rendered by such court amounts to nothing, as jurisdiction is everything.
11. Without further interrogation, it is explicitly clear that this court has no jurisdiction to deal with this case as by its nature, the tenant seeks to appeal against the Rent Restriction Tribunal's decision and orders through a court without jurisdiction.  
Even if the court were to make a finding for transfer of the application to the ELC Court as urged by tenant, it would be doing so in futility as there exists no appeal against the Tribunals Orders – see above legal provisions – section 8 of the *Rent Restriction Tribunal*; S.13 ELC Act; article 165 (3) and (5) of the *Constitution* among others.
12. In the premises, I am constrained to allow the application dated October 7, 2022.  
Consequently this Application HCCC MISC/E206 of 2022 is hereby struck out in its entirety with no orders on costs.  
Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JULY, 2023.**

**JANET MULWA**

**JUDGE**

