



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL APPEAL NO. 20 OF 2015

SAMUEL KURIA KAMAU.....PLAINTIFF

-VERSUS-

SAMMY KANDIE.....DEFENDANT

Coram: Hon. Justice R. Nyakundi

M/S Rioba Omboto & CO. Advocates for the respondent

M/S Ngigi Mbugua & CO. Advocates for the appellant

RULING

BACKGROUND

1. The Appellant Applicant filed a Notice of Motion Application dated 7th January, 2022 together with a Supporting Affidavit by **SAMUEL KURIA KAMAU** sworn on even date wherein the following orders were sought *inter alia*:

i. THAT there be stay of sale and further execution of purported arrears of rent levied against the appellant/tenant by the Respondent through M/S Hegeons Auctioneers on 22.11.2021 or any other Auctioneers pending the hearing of this application inter-parties.

ii. THAT the Honourable court be pleased to review its Orders contained in its ruling rendered on 09.11.2021 because it was made without jurisdiction as jurisdiction to hear and determine appeals from the Business Premises And Rent Tribunal is the preserve of the Environment and Land Court as prescribed by Section 15 of the LandLord and Tenant Shops, Hotels and catering establishments) Act as amended by Act No. 25 of 2015.

iii. THE balance of this application and Appeal be transferred to the Environment and Land Court-Appellate Division-Eldoret for hearing and final disposal.

2. In opposition to the aforementioned Application, the Respondent filed a Replying Affidavit by **SAMMY KANDIE** sworn on 31st January, 2022 together with Written Submissions also dated 31st January, 2022.

BRIEF FACTS

3. Aggrieved by a rent increment, the Appellant/ Applicant filed a Reference to Eldoret Business Premises and Rent Tribunal (BPRT) Cause No. 70 of 2012. The said cause was heard and determined on 23rd January, 2015.

4. Aggrieved by the decision of the aforementioned decision of the BPRT, the Appellant/ Applicant filed a Memorandum of Appeal to the High Court dated 5th February, 2015 together with an Application dated 10th February, 2015 seeking an order to stay of execution of the orders issued by the BPRT. The ruling of the Court in this Application was delivered on 29th April, 2015 wherein the Appellant/ Applicant was granted a conditional stay order to the effect that he proceeds to pay the increased rent of Kshs. 8, 450.00 per month with effect from the month of May, 2015 until the time when the Appeal is heard and determined failing which the Application stands dismissed.

5. Subsequently the Appellant/ Applicant filed an Application dated 24th September, 2019 seeking orders *inter alia* that the Respondent be

restrained from levying distress for rent and further that the Court orders the Respondent to render accounts of the arrears. The Court delivered its ruling on 9th November, 2021 dismissing the aforementioned Application.

6. Once again the Appellant/ Applicant filed the instant Application seeking to be granted the orders as appears on paragraph 1 hereinabove.

ANALYSIS AND DETERMINATION

7. I have read the Application herein together with the documents filed in support thereto and I find that there is only one primary matter for determination by this Court and the said issue is whether this Court has jurisdiction to entertain the instant claim?

WHETHER THIS COURT HAS JURISDICTION TO ENTERTAIN THE INSTANT CLAIM?

8. In the *locus classicus* case of **OWNERS OF THE MOTOR VESSEL “LILLIAN S” VS. CALTEX OIL (KENYA) LTD [1989] eKLR**, the Court of Appeal stated thus:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

9. The Supreme Court in **SAMUEL KAMAU MACHARIA & ANOTHER V KENYA COMMERCIAL BANK LIMITED & 2 OTHERS [2012] eKLR** held as follows:

“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.”

10. The Appellant/ Applicant has submitted that this Court lacks jurisdiction to entertain the Appeal that is pending before it as the same ought to be heard by the Environment and Land Court as is provided for in Section 15(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301) which provides as follows:

15. Appeal to court

(1) Any party to a reference aggrieved by any determination or order of a Tribunal made therein may, within thirty days after the date of such determination or order, appeal to the Environment and Land Court:

Provided that the Environment and Land Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.

11. From a reading of the foregoing provision, this Court finds that it is bereft of jurisdiction to hear and determine the Appeal that is pending before it.

12. The Court of Appeal in **PHOENIX OF E.A. ASSURANCE COMPANY LIMITED V S. M. THIGA T/A NEWSPAPER SERVICE [2019] eKLR** adopted the following definition of Jurisdiction:

“In common English parlance, ‘Jurisdiction’ denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae”

13. The Appellant/ Applicant sought to have the Appeal pending before this Court transferred to the Environment and Land Court. This Court is guided by the decision of the Court in **EQUITY BANK LIMITED V BRUCE MUTIE MUTUKU T/A DIANI TOUR TRAVEL (2016) eKLR** in the following words:

“In numerous decided cases, courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under S.18 of the Civil Procedure Act to transfer a suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow a court to transfer an incompetent suit for want of jurisdiction to a competent court would be to muddle up the waters and allow confusion to reign, It is settled that parties cannot, even by their consent confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where it lacks parties cannot even seek refuge under the O2 principle or the overriding objective under the Civil Procedure Act, the Appellate Jurisdiction Act or even Article 159 of the Constitution to remedy the same.

...In the same way, a court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through transfer.”

14. In view of the foregoing, this Court finds that since the Appeal herein was filed in a Court with no Jurisdiction, no competent suit exists that is capable of being transferred.

15. The Appellant/ Applicant also sought to review the order of this Court issued on 9th November, 2021. In **PHOENIX OF E.A. ASSURANCE COMPANY LIMITED (SUPRA)** the Court cited with approval the time honoured *locus classicus* case of **Macfoy v United Africa Co LTD [1961] 3 All ER, 1169**, ... In that case it was held thus:

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse...”

16. This Court finds that there is no need for the orders issued on 9th November, 2021 to be set aside noting that this Court had no jurisdiction to issue the said orders in the first place.

CONCLUSION

17. In **PETER MUKHUNYA MALOBA V DENNIS KUSINYO [2020] eKLR** the Court held as follows:

Jurisdiction is conferred by law, in particular the Constitution and statute. With regard to land, the Constitution, the Land Registration Act, the Land Act and the Environment and Land Court Act have conferred jurisdiction on the Environment and Land Court. The High Court has no jurisdiction over those matters on which the Environment and Land Court has been conferred with jurisdiction by the said statutes. The High Court cannot confer jurisdiction upon itself over such matters.

18. This Court finds that it has no jurisdiction by dint of the provisions of Section 15 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301). Noting that the Application dated 7th January, 2021 is filed within an Appeal that is filed in the wrong forum the same is dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 28TH DAY OF FEBRUARY, 2022.

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R. NYAKUNDI

JUDGE