



**Murigu v Horeria (Environment and Land Civil Miscellaneous Application
E229 of 2022) [2023] KEELC 17792 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17792 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CIVIL MISCELLANEOUS APPLICATION E229 OF 2022**

LN MBUGUA, J

MAY 25, 2023

BETWEEN

MARGARET NYAKINYUA MURIGU APPLICANT

AND

JAMES KIMANI HORERIA RESPONDENT

RULING

1. This suit was instituted by the applicant *vide* Misc notice of motion application dated September 5, 2022, seeking orders that the caveat registered on February 24, 1997 against the parcel of land known as land reference No 20528 be removed, that the respondent be compelled to pay within 30 days all the outstanding land rent and rates together with the accrued interest and penalties from June 30, 1997 to date and that the respondent be ordered to hand over the property to the applicant.
2. In opposition, the respondent filed a notice of preliminary objection dated December 9, 2022 which is for determination by this court. He contends that this court has no jurisdiction to entertain the suit since the court of appeal has already rendered itself on the matter.
3. The respondent points out that the suit is based on an impugned judgement in Nairobi HCCC No 399 of 2001 which was appealed against in the Court of Appeal in Nairobi CACA No 41 of 2004 James Kimani Horeria v Margaret Nyakinyua Murigu and a decision rendered on February 21, 2013 allowing the appeal.
4. The submissions of the respondent dated February 2, 2022 are a rehash of his preliminary objection dated December 9, 2022.
5. The applicant filed her submissions dated March 3, 2023 which address the following issues;
 - a. Is the preliminary objection based on points of law?
 - b. Does this court have jurisdiction to hear the applicant's application?



- c. What were the orders of the court in CACA No 41 of 2004?
6. Relying on the decision in *Deepak Lalchand Nichani v Kenya Revenue Authority & another* [2021] eKLR, the applicant submits that the respondent's preliminary objection raises a point of law only to the extent of questioning the jurisdiction of this honourable court while other grounds are based on facts.
 7. On the issue as to whether this court has jurisdiction to hear the application, she submits that the court's jurisdiction is donated by article 162 of the *Constitution* as read with section 13 of the *Environment and Land Court Act*.
 8. She relies on section 4 (4) of the *Limitation of Actions Act* as well as the case of *Koinange Investments and Development Company Limited v Ian Kabiu Ngethe & 3 others* [2015] eKLR to submit that the judgement of the court issued 20 years ago on February 21, 2003 and the one issued in HCCC No 399 of 2001 cannot be enforced before this court or any other court.
 9. She points out that the Court of Appeal ordered the respondent herein to pay her Ksh 9.5 million within 90 days of judgement being February 21, 2013 and it is was upon fulfilling this condition that she was required to release all the registrable documents to the respondent herein. She argues that since the respondent failed to comply with the orders of the Court of Appeal, this court is left with jurisdiction to hear and determine the application.
 10. She relies on the case of *Hassan Zubeidi v Patrick Mwangangi Kibaiya & another* [2014] eKLR to submit that if there was neglect to comply with court orders, then this was on the part of the respondent since he failed to comply with the conditional orders of the Court of Appeal issued on February 21, 2013.

Determination

11. The issue arising for determination is whether the preliminary objection raised by the respondent is sustainable in tandem with the holding in *Mukisa Biscuits Manufacturing Ltd v West End Distributors* (1969) EA 696. In *The Owners of Motor vessel Lillian 'S' v Caltex Kenya Limited* [1989] KLR 1, the court held that;

“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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
12. The respondent argues that by filing this suit, the applicant is enforcing a judgment issued in Nairobi HCCC No 399 of 2001 and which was overturned by the Court of Appeal in CACA No 41 of 2004 *vide* its judgment dated February 21, 2013. On her part, the applicant argues that the said judgement of the Court of Appeal is now stale pursuant to section 4 (4) of the *Limitation of Actions Act*.
13. The law on enforceability of a judgement is contained in section 4 (4) of the *Limitations of Actions Act*. A judgement becomes stale after twelve years without execution. It is not disputed that the judgment of the Court of Appeal in CACA No 41 of 2004 was entered on February 21, 2013. The issue to determine then is whether indeed the said judgement exists as alleged by the respondents or it has become stale as alleged by the applicant.



14. In *M’ikiara M’ Rinkanya & another v Gilbert Kabeere M’Mbijwe* (2007) eKLR the court held:

“If the judgment is not enforced within the stipulated period, the rights of the decree holder are extinguished”.

15. I hold the view that while the orders of the Court of Appeal in CACA No 41 of 2004 were conditional, they have not become stale within the meaning of section 4(4) of the *Limitation of Actions Act*. This court has no mandate to re-hear the dispute nor vary the Court of Appeal order. As long as there is an order/ judgment from the Court of Appeal, which is not stale, this court can only give orders geared towards implementation of the said judgment. In the circumstances, this court has no jurisdiction to determine this suit, which is now hereby struck out. Each party is to bear their own costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

E. Gaturu for Respondent

M/s Kiunga for Applicant holding brief for Theuri

Court assistant: Eddel

