Geoloy Investments Limited v Kenya Shell Limited (Civil Appeal 372 of 2015) [2022] KEHC 11522 (KLR) (28 July 2022) (Ruling)

Neutral citation: [2022] KEHC 11522 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL APPEAL 372 OF 2015

JN MULWA, J

JULY 28, 2022

BETWEEN

GEOLOY INVESTMENTS LIMITED ..... APPELLANT

AND

KENYA SHELL LIMITED ..... RESPONDENT

(Being an appeal from the judgment and decree of the Chief Magistrate Court in CMCC No. 13107 of 2006 delivered by at Milimani Hon. Chesang (RM) on 7th July 2015)

RULING

1. Judgment on the Appeal herein was scheduled for delivery on the 28th July 2022. The Appeal arose from Milimani CMCC No. 13107 of 2006: Kenya Shell Limited v Geoloy Investments Limited.

2. In the plaint filed in the trial court, the respondent, the plaintiff then, pleaded that by a lease agreement made on May 6, 1998, Tropicana Agricultural Contractors Limited leased to it a property known as Land Reference Number 209/12925 situate in Nairobi, for a term of ten (10) years from 1st January 1997, with an option for renewal. The Respondent paid the rent for the full term in five tranches on diverse dates and erected a petroleum storage and dispensing depot on the premises. Subsequently, vide an agreement made on May 15, 2002 (Reseller Agreement), the Respondent granted the Appellant a license to occupy the depot and use the facilities thereon exclusively for distributing the Respondent's products.

3. By a sale agreement dated October 4, 2002, the suit property was sold to the appellant inclusive of the said lease. Thereafter, on November 9, 2002, the parties entered into a Consignment Stock Agreement (CSA) in furtherance of the reseller agreement and more particularly, for the sale of the respondent's bitumen stock. However, upon the termination of the Reseller and CSA Agreements, the appellant refused to vacate the premises. As such, the respondent sought judgment against the appellant for: Kshs. 1,765,890/- (on account of rent paid for the period it had been deprived of the use of the leased

property) plus interest thereon; in the alternative, an order compelling the Defendant (the appellant herein) to deliver up the leased property to the plaintiff; a declaration that there is an enforceable covenant to renew the lease; and, costs of the suit.

4. The appellant filed a statement of defence and counterclaim in which it denied the claim and faulted the respondent for failing to pay its monthly commissions prior to and after the termination of the CSA. The appellant also faulted the respondent for continuing to use the suit premises without paying the requisite land rates and rents. As such, it sought judgment against the Respondent for inter alia: Kshs. 2,035,367.25 comprising Kshs. 55,100/- for rent for the year 2003; Kshs. 82,620/- for land rent for the year 2003; Kshs. 145,347.25 for land rates for the years 2002 and 2003; and outstanding agency fees under the CSA.

5. In her judgment, the learned trial magistrate held that both parties had proved their claims and ordered the respondent to pay the appellant Kshs. 234,110/- being the balance of the amount set off against each other's claim.

6. From the foregoing, it is evident that the dispute between the parties was predominantly about the use, occupation and possession of Land Reference Number 209/1925, Nairobi pursuant to the lease of the same to the Respondent herein. Further, whereas the dispute in the Appellant's Counterclaim on unpaid agency fees is commercial in nature, it is so intertwined with the appellant's use and occupation of the suit property that it cannot be separated from the main dispute. What this means is that the appeal ought to have been filed in and determined by the Environment and Land Court as this court does not have jurisdiction to entertain matters relating to use and occupation of land.

7. The jurisdiction of the Environment and Land Court is set out in section 13 of the *Environment and Land Court Act* which stipulates as follows:

> 1. The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with article 162(2) (b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
>
> 2. In exercise of its jurisdiction under article 162(2)(b) of *the Constitution*, the court shall have power to hear and determine disputes——
>
> a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
>
> b. relating to compulsory acquisition of land;
>
> c. relating to land administration and management;
>
> d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
>
> e. any other dispute relating to environment and land.

8. In the premises, I decline to take any action in respect of the appeal as well as the cross appeal and down my tools in line with the celebrated case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR where the court rendered 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 its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

9. For the above reasons, the appeal herein is transferred to the Environment and Land Court for hearing and determination.

Orders accordingly.

DATED SIGNED AND DELIVERED THIS 28TH DAY OF JULY 2022.

J.N. MULWA

JUDGE