



**Greenchain International Kenya Limited v Azalea Holdings Limited & 2 others (Miscellaneous Application E815 of 2021) [2022] KEHC 13966 (KLR) (Civ) (4 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 13966 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS APPLICATION E815 OF 2021  
DO CHEPKWONY, J  
AUGUST 4, 2022**

**BETWEEN**

**GREENCHAIN INTERNATIONAL KENYA LIMITED ..... PLAINTIFF**

**AND**

**AZALEA HOLDINGS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**HUB KAREN MANAGEMENT COMPANY ..... 2<sup>ND</sup> DEFENDANT**

**UPSTATE KENYA AUCTIONEERS ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff respondent has raised a preliminary objection seeking to strike out the defendant's notice of motion application dated November 2, 2021 on grounds that;-
  - a. The High Court does not have jurisdiction to hear and determine the matter;
  - b. By hearing and determining this matter, the High Court will be acting in excess and/or beyond the jurisdiction and in contravention of Article 162(2)(b) of the *Constitution of Kenya, 2010* and Section 13 of the *Environment and Land Court Act, 2011*.
  - c. The said notice of motion application is fatally defective and cannot stand in law as it is anchored on conflicting and independent jurisdiction of the Environment and Land Court, hence the jurisdiction of this Honorable is not properly seized.
2. The plaintiff prays that the defendant's application dated November 2, 2021 be dismissed or struck out with costs and orders issued by this honorable court on November 5, 2021 be set aside or vacated.
3. The defendants have opposed the notice of preliminary objection vide grounds of opposition dated January 14, 2022, wherein it is stated therein that the High Court has the requisite jurisdiction to



determine the defendant's application by virtue of article 165(3) of the [Constitution of Kenya, 2010](#) which confers it unlimited and original jurisdiction in both Civil and Criminal matters. Also that the Applicant is seeking to transfer MCC/E4431/2020, [Greenchain International Kenya Limited – vs Azalea Holdings Limited & 2 Others](#) to the High Court which was filed in the Chief Magistrate's Court at Milimani and not at the Environment and Land Court. According to the defendants, the filing of a suit in the wrong High Court Division is not fatal to the extent of invalidating a suit as was observed by the Court of Appeal in the case of [Daniel N. Mugendi –vs- Kenyatta University & 3 Others](#) (2013) eKLR. Lastly, that the Plaintiff's Notice of Preliminary Objection is frivolous and vexatious and only meant to delay the fair trial of the suit if allowed.

4. On February 9, 2022, the parties were directed to dispose of the application dated November 2, 2021 and notice of preliminary objection by way of written submissions. The plaintiff's submissions are dated December 20, 2021 while the defendant's/applicant's submissions are dated February 21, 2022. I have read through the submissions.

### Determination

5. I have read through the notice of motion application, the affidavit in support thereof, notice of preliminary objection together with the  
Grounds of opposition alongside the written submissions filed and highlighted by both parties. I have also taken into consideration the cited statute and case law. I find the issues for determination being:-
  - a. Whether the notice of preliminary objection in jurisdiction of this court has merit; and if so,
  - b. Whether the notice of motion dated November 2, 2021 is fatally defective.
6. With regard to the first issue, it is trite that what constitutes a preliminary objection is well captured in the case of *mukisa Biscuits Manufacturing Ltd –vs- West End Distributors* (1969) EA 696, where it was observed that;

“----a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case Sir Charles Newbold, P. stated:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

7. It is not in dispute that the instant notice of preliminary objection raises a pure point of law, which is whether in entertaining the notice of motion dated November 2, 2021 and in this matter in general, this court will be exercising jurisdiction in contravention of article 162(2)(b) of the [Constitution of Kenya](#) and Section 13 of the [Environment and Land Court Act](#).
8. The defendant's application dated November 2, 2021, the subject of this objection, is seeking for orders for stay of proceedings inthat;



- a. The application be certified urgent and heard ex-parte at the first instance;
  - b. The proceedings in suit No.MCCC/E4431/2020- *Greechain International Kenya Limited vs Azalea Holdings Limited*, The Hub Karen Management Company and Upstate Kenya Auctioneers at the Milimani Chief Magistrate’s Commercial Court, Nairobi be stayed pending the hearing and determination of this Application;
  - c. The Civil Suit No. MCCC/E4431/2020- *Greechain International Kenya Limited vs Azalea Holdings Limited*, The Hub Karen Management Company and Upstate Kenya Auctioneers be transferred from the Milimani Chief Magistrate’s Commercial Court, Nairobi to the Milimani High Court Commercial and Admiralty Division at Nairobi for directions, hearing and final determination;
  - d. The deposit of Kshs.200,000/= made by the Plaintiff in MCCC/E4431/2020, *Greechain International Kenya Limited vs Azalea Holdings Limited & 2 Others* pursuant to the Chief Magistrate’s Court orders of January 8, 2021, be transferred to the custody of the High Court registry pending the hearing and determination of this Application;
  - e. The deposit of Kshs.200,000/= made by the Plaintiff in MCCC/E4431/2020, *Greechain International Kenya Limited vs Azalea Holdings Limited & 2 Others* pursuant to the Chief Magistrate’s Court orders of 8<sup>th</sup> January, 2021, be transferred to the custody of the High Court registry pending the hearing and determination of the main suit;
  - f. Costs of the application be borne by the plaintiff respondent.
9. The suit that is sought to be transferred to the High Court was instituted vide a plaint dated August 24, 2020 in which the plaintiff is praying for orders against the defendants jointly and severally for;
- a. A declaration that the Notice issued by the plaintiff/applicant giving its intention to terminate the lease agreement and vacate the leased premises was a valid notification for termination of the lease agreement hence legally determines the lease agreement between parties.
  - b. A declaration that the plaintiff is by law entitled to terminate the lease agreement entered into between the plaintiff and the 1<sup>st</sup> respondent upon issuance of a valid thirty (30) days’ vacation notice hence owes not the Respondents any rent arrears having paid rent for the 1<sup>st</sup> quarter and not operating business upon issuance of the vacation notice.
  - c. The honorable court be pleased to issue an order directing the respondent to deduct the fees for service charge, utility and promotional fund and outstanding rent if any from the amount of Kshs.2,449,304.25 paid by the plaintiff/applicant to them as deposit for the leased premises and deposited in court as security to cater for the said outstanding payment as per Clause 3,1 of the lease agreement.
  - d. A declaration that the respondent’s position that the plaintiff ought to pay the full value of the entire and/or remainder of the lease term which cumulatively is six (6) years is null and void ab initio.
  - e. An order do issue compelling the 1<sup>st</sup> and 2<sup>nd</sup> respondents to furnish the court with reconciliation of accounts from July 26, 2019 to date and/or until the plaintiff/applicant closed shop and issued a vacation notice in relation to quarterly rent payment.



- f. A declaration that the alleged proclamation carried out on August 18, 2020 by the 3<sup>rd</sup> respondent and the threatened attachment of the plaintiff/applicant's movable goods in the purported execution of distress for rent is irregular, illegal and null and void ab initio.
  - g. An order of permanent injunction to restrain the defendant/respondents whether by themselves their employees, assigns, servants, agents, representatives and/or any other person acting in their interest/ instructions from confiscating the goods of the Plaintiff and interfering with the peaceful vacation of the premises by the Plaintiff.
  - h. A mandatory injunction compelling the defendants to forthwith restore all the plaintiff's movable goods appearing as per the proclamation notice which were unlawfully seized and/or carted away from the premises (UNIT. C2.01) erected on the lower level of the Hub Karen.
  - i. Costs of the suit.
10. Going by the above prayers in the Plaint, the gist of the suit before the Magistrates court, emanates from a lease agreement for a business premise.
11. Article 162(2) of the [Constitution](#) provides that "Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to the environment and use and occupation of, and title to land".
12. Section 13 of the [Environment and Land Court Act](#), provides that:-
- (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.
13. In the instant case, the issue for determination relates to a lease agreement for a business premise wherein the Plaintiff paid rent to the Defendants. The declarations sought in the Plaint relates to the validity of notices and termination of the said lease agreement. In view of this, I am persuaded that these are not declarations capable of being granted by the High Court by virtue of Article 165(5) of the [Constitution of Kenya 2010](#) which in a nutshell provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2) and as observed by the Supreme Court in *Republic -vs- Karisa Chengo & 2 Others* (Supreme Court Petition No.5 of 2015) 2017 eKLR, as they relate to tenure and rent as provided for under Section 13 (2)(a) of the [Environment and Land Court Act](#).



14. The Court of Appeal in the case of *Daniel N. Mugendi -vs- Kenyatta University & 3 Others* [2013]eKLR observed that it is prudent to have matters transferred to the court with the requisite jurisdiction instead of dismissing them. The court had this to say in that regard;-

“...And in order to do justice, in the event where the High Court, the Industrial Court or the Environment & Land Court comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar/equal status should in the spirit of harmonization, effect the necessary transfers among themselves until such time as the citizenry is well-acquainted with the appropriate forum for each kind of claim...”

15. In reliance to the above cited decision, I direct that the defendants’ Application dated November 2, 2021 be and is hereby transferred to the Environment and Land Court for hearing and determination.
16. Consequently, the interim orders issued by this court on Court on November 5, 2021 shall remain in force until fresh orders and/or directions are issued by a Judge of the Environment and Land Court.
17. Costs to be in the cause.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF AUGUST., 2022**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

Mr. Njeru for Defendant/Applicant

M/S Owino counsel holding brief for Mr. Otieno for Plaintiff/Respondent

Court Assistant - Sakina

