



National Cereal & Produce Board v Malovi Trading as Taza Chemists (Civil Appeal 103 of 2018) [2022] KEHC 13799 (KLR) (23 September 2022) (Judgment)

Neutral citation: [2022] KEHC 13799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 103 OF 2018
WM MUSYOKA, J
SEPTEMBER 23, 2022**

BETWEEN

NATIONAL CEREAL & PRODUCE BOARD APPELLANT

AND

EDWARD JUMA MALOVI TRADING AS TAZA CHEMISTS RESPONDENT

(Being an appeal from judgment and decree by Hon. W. Lopokoiyit, Resident Magistrate, of 12th July 2018, in Kakamega CMCCC No. 153 of 2014)

JUDGMENT

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1. The suit before the trial court was by the appellant against the respondent, over rent arrears and unsettled electricity and water bills. It was alleged that respondent was a servant of the appellant, and that there was an agreement in writing, made in 2002, to effect that the appellant would rent to the respondent a residential house within Milimani Estate, Kakamega, for Kshs 8, 000.00, payable quarterly in advance. The claim was that the respondent had failed or refused to pay the rent. The amount claimed was for the unpaid rent and accumulated water and electricity bills. In the defence, it was averred that the respondent had paid all the rent in full at the time he moved out of the premises.
 2. Evidence was taken from two witnesses, who testified for the appellant. Both stated that the respondent had occupied a house owned by the appellant, but was not paying rent, and was in arrears. The respondent was absent on the date the matter came up for hearing, and, therefore, no defence was offered, and the court closed the defence case. In the judgment, delivered on July 12, 2018, the trial court dismissed the case on grounds that the claim was statute-barred.



3. I doubt whether I, sitting as a Judge of the High Court, have any jurisdiction to entertain the instant appeal, in view of articles 162(2) and 165(5) of the Constitution of Kenya, which provide as follows:

“162 Parliament shall establish courts with the status of the High Court to hear and
(2) determine disputes relating to —
(a) ...
(b) the environment and the use and occupation of, and title to, land.”

“165 The High Court shall not have jurisdiction in respect of matters —
(5) (a) ...
(b) falling within the jurisdiction of the courts contemplated in article 162 (2)”

4. The parties had entered into a contract, where the appellant leased or rented its premises to the respondent. A lease or tenancy is a contract to occupy and use land, or premises standing on land. A house is a structure affixed to land, and that makes it part of the land. A tenancy or lease gets caught up in article 162(2), and, by dint of article 165(5), there would be no jurisdiction for a Judge of the High Court to hear the matter, whether as a primary court or on appeal.

5. Jurisdiction is conferred by the Constitution or statute, and the court cannot arrogate itself jurisdiction, by what is known as judicial craft. See Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR (Mutunga CJ&P, Tunoi, Ojwang, Wanjala & Ndung’u SCJJ). Where there is no jurisdiction, the court stops on its tracks. See the Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR (Nyarangi, Masime & Kwach JJA).

6. Should I order transfer of the appeal to the court with jurisdiction? Case law favours striking out or dismissal of actions filed in a court without jurisdiction, instead of transferring them to the court with jurisdiction. Such actions would be incompetent, and the court ought not to transfer incompetent actions to the other court, for that court ought not to entertain actions that were originally incompetent. Secondly, if the court does not have jurisdiction to entertain the actions, there should be no jurisdiction to transfer it. See Equity Bank Limited vs. Bruce Mutie Mutuku t/a Diani Tour Travel [2016] eKLR (Makhandia, Ouko & M’Inoti JJA) and Phoenix of EA Assurance Company Limited v SM Thiga t/a Newspaper Service [2019] eKLR (Karanja, Gatembu & Sichale JJA).

7. Consequently, the appeal herein is struck out. As the respondent has never attended court, on the few dates the matter came up, I shall not award costs. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 23RD DAY OF SEPTEMBER 2022

W MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Mr. Siganga, instructed by Siganga & Company, Advocates for the appellant.

