



REPUBLIC OF KENYA



**KENYA LAW**  
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**Huma v Mwaura & 4 others (Miscellaneous Application E213 of 2022)  
[2022] KEHC 13595 (KLR) (Civ) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13595 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**MISCELLANEOUS APPLICATION E213 OF 2022**

**JN MULWA, J**

**SEPTEMBER 22, 2022**

**BETWEEN**

**JOHN IRUNGU HUMA ..... APPLICANT**

**AND**

**PETER GICHUNGU MWAURA ..... 1<sup>ST</sup> RESPONDENT**

**ANGELINA MUTONO MUTISO ..... 2<sup>ND</sup> RESPONDENT**

**STEPHEN NJOROGE KAMAU ..... 3<sup>RD</sup> RESPONDENT**

**MIRIUM WANGARI GATUMA ..... 4<sup>TH</sup> RESPONDENT**

**SAMUEL IRUNGU IKUWA ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. By an application dated April 4, 2022 brought under provisions of order 22 rule 22(1), order 42 rule 6 and order 50 rule 6 of the Civil Procedure Rules (CPR) and sections 1, 1A, 3, 3A, 79G and 95 of the Civil Procedure Act, the applicant John Irungu Huma seeks reliefs from the court; thus
  1. Spent
  2. Suspension of orders for committal to civil jail made on the March 31, 2022 by the Hon H M Nyaga (CM) in civil case No 5006 of 2018 pending hearing and determination of the application.
  3. An order of stay of execution of judgment delivered in the said case pending hearing and determination of the intended appeal.



4. Leave to appeal out of time against the judgment in CMCC No 5006 of 2018 dated June 21, 2019.
  5. Any other relief as the court deems fit and just in the circumstances.
  6. Costs of the application.
2. The applicant swore the supporting affidavit and stated 32 grounds upon which the application is premised.
  3. The application is opposed by a replying affidavit, and grounds of opposition dated April 21, 2022. Parties have also filed written submissions to urge their respective positions.
  4. The primary suit that gave birth to these proceedings before this court is stated to be Milimani CMCC No 5006 of 2018 between the parties hereto.
  5. A perusal of the documents attached to the supporting affidavit are the decree arising from the judgment whereof the plaintiff's claim was for general damages for illegal eviction and loss of business. Other documents show that the dispute was between the applicant as landlord and the respondents as the tenants, and a landlord's notice to terminate or alter terms of tenancy by the applicant.
  6. By his own affidavit in support of the application before me, the applicant at paragraph 3 states that the respondents were tenants at his commercial building known as Zima mall located at LR No Nairobi/Block/116/365, and that the dispute arose from the notice to terminate tenancy issued to the respondents, and that the suit was eventually transferred to the Environment and Land Court at Nairobi which upon hearing, in the presence of the applicant, a judgment was delivered by the lower court (sitting as an Environment and Land Court) on June 21, 2019 by the Hon A M Obura (Mrs) Senior Principal Magistrate.
  7. By the above, I am of the considered view that the application before me dated April 4, 2022 does not belong to this court for lack of jurisdiction. I say so because an analysis of the cause of action with the material placed before me show that what was before the trial court was clearly a dispute between a landlord and tenants.
  8. It is the judgment of the trial court sitting as an Environment and Land Court that is the subject of the application.
  9. The jurisdiction of the Environment and Land Court as stated at section 13 of the Act is well spelt out thus:
    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. 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.
10. Without a doubt therefore, the matter before this court, ought to have been filed before the ELC. This court lacks jurisdiction to entertain the application.
11. In the result, I decline to take any action in respect of the application dated April 4, 2022, and down my tools, taking guidance from the celebrated case of *Lillian "S"* [1989] KLR 1, wherein the court rendered that:
- “Jurisdiction is everything. Without it, a court has no power to make one more step. 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. For the above reasons, this matter, Misc Application No E213 of 2022 is hereby transferred to the Environment and Land Court (ELC) for directions on the application dated April 4, 2022.
13. In the meantime, the orders dated April 5, 2022 (Chitebwe J) granting prayer No 2 of the application pending hearing and determination of the application dated April 4, 2022 shall remain in force, until further orders by the ELC court. Parties are directed to take a mention date before the deputy registrar of the ELC for taking further directions and placing the matter before a judge of the ELC for directions on the application.

Orders accordingly.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2022.**

**J.N. MULWA**

**JUDGE**

