



Kiraguri & another v Indo Africa Finance Ltd (Civil Appeal (Application) E173 of 2020) [2022] KEHC 14271 (KLR) (Civ) (21 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14271 (KLR)

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

CIVIL APPEAL (APPLICATION) E173 OF 2020

JK SERGON, J

OCTOBER 21, 2022

BETWEEN

JOSEPH WACHIRA KIRAGURI 1ST APPELLANT

SHELMITH WAMAITHA WACHIRA 2ND APPELLANT

AND

INDO AFRICA FINANCE LTD RESPONDENT

RULING

1. The instant application is dated June 2, 2021 and is seeking for orders that;
 - a. Spent;
 - b. Spent;
 - c. An injunction do issue restraining the respondent and the intended interring (sic) 3rd party from evicting, taking possession of, harassing or otherwise interfering with applicants' occupation of the house known as Nairobi/Block/ 76/498;
 - d. One Mr Stephen Kiramana Ilongi be enjoined in these proceedings as an interested party and service upon him be effected by way of substituted service;
 - e. The purported sale by public auction of the property known as Nairobi/Block/76/498 made on December 11, 2020 be set aside;
 - f. The land registrar be restrained by an order of this court from affecting(sic) transfer of the property known as Nairobi/Block/76/498 to the purported purchaser Sphen Kiramana Ilongior any other person and if transfer has been effected, the same be cancelled forthwith;



- g. Costs of the application be provided for.
2. It is anchored on the grounds on the face of it and the depositions in the supporting affidavit of Joseph Wachira Kiraguri sworn and dated June 2, 2021. It is stated that the appellant filed an application under certificate on November 30, 2020 seeking among other orders that the respondent be restrained from selling the house in issue which is Nairobi/Block/76/498 which was allowed in terms of prayer 2 and restraining orders were granted pending the determination of the said application.
 3. Further that the order and the application were duly served on the respondent. The application came up for hearing on December 10, 2020 when Mr Omuga advocate appeared for the respondent and sought more time to get instructions which was granted and the court extended the interim orders. It is further stated that the matter came up severally for mention and Mr Omuga who was on record for the respondent kept indicating that he had not received instructions since his client was receiving treatment abroad and never informed the court that the orders sought had been overtaken by events since the suit property had already been sold and this information was in the knowledge of the advocate.
 4. It is contended that the respondent should not be allowed to enjoy the fruits of an illegal exercise of disobedience of court orders. It is the applicant's contention that the respondent's directors should be cited for contempt of this honorable court.
 5. The application is opposed. The respondent filed a replying affidavit sworn by Leon Ndubai dated June 30, 2021. It is stated that the instant application is fundamentally defective and violates the cardinal provisions of the *Constitution*. Further that the applicant herein filed a similar application at the trial court namely; CMCC No 8971 of 2019(Nairobi) Joseph Wachira Kiraguri and Another Vs Indo Africa Finance Ltd which was dismissed by the trial court for want of merit.
 6. On the May 25, 2020, another application was instituted by the applicant herein which was dismissed on August 6, 2020 for being res judicata and an abuse to the court process. That it is this ruling of August 6, 2020 that the applicants appeal is anchored.
 7. It is further stated that despite filing the memorandum of appeal, the applicant filed another application at the trial court on August 31, 2020 which was again dismissed on November 19, 2020 for being res judicata and an abuse of the process of court.
 8. The respondent contends that the litigious conduct of the applicant is an abuse of the court process and a wastage of the precious judicious time and the numerous applications are intended to deny the respondent the enjoyment of the fruits of the ruling of the trial court hence extremely prejudicial to the owner.
 9. It is further contended that the instant application has not met the threshold for grant of the orders sought and that this court lacks the requisite jurisdiction to entertain it. The respondent deposes that the instant application cannot be heard in absence of the legal owner of the premises in question being heard. Further that the instant application is frivolous, scandalous, vexatious and an abject abuse of the court process and the same should be dismissed.
 10. By consent of parties, the instant application was canvassed by way of written submissions. I have considered the application, the affidavits in support and against and the rival submissions by the respective parties.
 11. The respondent has raised the question of jurisdiction by virtue of the fact that the prayers sought in the instant application can only be granted by the Environment and Land Court.



12. I have perused the application and I am satisfied that the court with the power to grant such prayers is the Environment and Land Court and not the High Court. I am persuaded by the decision of the Supreme Court in in the case of Republic -vs- Karisa Chengo & 2 Others (Supreme Court Petition No 5 of 2015) 2017 eKLR, where the Supreme Court pronounced itself as follows: -

' Flowing from the above, it is obvious to us that status and jurisdiction are different concepts. Status denotes hierarchy while jurisdiction covers the sphere of the court's operation. Courts can therefore be of the same status, but exercise different jurisdictions. That is why this court has reaffirmed its position that the jurisdiction of courts is derived from the Constitution or legislation.

.In addition to the above, we note that pursuant to article 162(3) of the Constitution, parliament enacted the Environment and Land Court Act and the Employment and Labour Relations Act and respectively outlined the separate jurisdictions of the ELC and ELRC as stated above. From a reading of the Constitution and these acts of parliament, it is clear that a special cadre of courts, with sui generis jurisdiction, is provided for. We therefore entirely concur with the court of appeal's decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. The three are different and autonomous courts and exercise different and distinct jurisdictions. As article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.'

13. This court being the High Court is precluded from entertaining this matter reserved for the Environment and Land Court hence this court lacks the requisite jurisdiction to entertain the appellant's appeal and the application. The locus classicus case of Owners of the Motor Vessel 'Lillian S' -vs- Caltex Oil (Kenya) Ltd (1989) KLR 1 guided the court on what to do once it realizes that it does not have jurisdiction over a matter before it. It was held: -

' 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.'

14. Owing to the above, I have no option but to down my tools and dismiss the applicant's application for want of jurisdiction. Consequently, the interim orders issued by this court automatically lapse hence discharged.

15. I decline to entertain the matter. The same is transferred forthwith to the Environment and Land Court for hearing and disposal. Each party to bear their own costs

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 21ST DAY OF OCTOBER, 2022.

.....

JK SERGON

JUDGE

In the presence of:

.....for the 1st appellant/applicant



..... for the 2nd appellant/applicant

.....for the respondent

..... for the respondent

