



REPUBLIC OF KENYA



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**Mocha Hotel Limited v Kwanza Estates Limited (Environment & Land
Case 14 of 2022) [2023] KEELC 18407 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18407 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 14 OF 2022**

**M SILA, J
JUNE 29, 2023**

BETWEEN

MOCHA HOTEL LIMITED PLAINTIFF

AND

KWANZA ESTATES LIMITED DEFENDANT

(Preliminary objection raised that this court has no jurisdiction; plaintiff filing suit complaining of illegal eviction, illegal distress and conversion of his goods by the defendant; all this arising out of a landlord/tenant relationship; Environment and Land Court having jurisdiction to bear disputes related to tenancies as tenancies relate to the right to use and occupy land; preliminary objection dismissed.)

RULING

1. This suit was commenced through a plaint filed on 22 June 2022. The plaintiff avers to have been a tenant in the premises known as Mocha Plaza in Kisii Town which was owned by one Josphat Mwangi Moracha. He pleads that he was a protected tenant. In the month of July 2021, Housing Finance Company Limited, sold the premises in a public auction to the defendant. Upon become proprietor, the defendant issued rent demand notices to the plaintiff, demanding payment of rent, which the plaintiff contends was not agreed and it is the plaintiff's further assertion that such rent demand notice was illegal. It is pleaded that after issuing the unlawful notice the defendant closed the operations of the plaintiff and that despite various court orders, it refused to reopen the same for the plaintiff to continue its business. It is pleaded that despite having closed the operations of the plaintiff, the defendant issued instructions to auctioneers to proclaim goods of the plaintiff in an attempt to demand arrears of rent which was not due.
2. The plaintiff pleads that the defendant proceeded to take over its operations and converted the plaintiff's business, furniture and fittings to its own use and is operating a business similar to that operated by the plaintiff using the plaintiff's facilities and goods. The plaintiff pleads that the defendant



has converted her goods worth Kshs 168,873,435/=. She also pleads to have lost business and goodwill for unlawful eviction and has made a claim of loss of business of Kshs 2,000,000/= per month for 5 years and loss of goodwill of Kshs 120,000,000/=. In the plaint she states that she is also claiming general damages for unlawful eviction, conversion of goods and unlawful attachment though the prayers as spelt out are as follows :-

- a. Special damages of Kshs 408, 873,435/=
 - b. Costs of the suit
 - c. Interest on (a) and (b) above from the date of filing suit.
 - d. Such further orders as this court may deem just.
3. The defendant entered appearance and filed defence. She agreed that the plaintiff was a protected tenant but denied closing the operations of the plaintiff. She admitted instructed an auctioneer to levy distress in August 2021 for the recovery of Kshs 12,812,060.80/= being rent for the months of July and August 2021. She pleads that the plaintiff then filed a suit before the Business Premises Rent Tribunal being Case No. E005 of 2020 and that on 17 September 2021, the tribunal ordered that status quo be maintained pending delivery of a ruling on 7 October 2021 thus suspending the auction scheduled for 20 September 2021. She pleaded that after delivery of the ruling, she instructed the auctioneer to proceed and advertise the distrained goods to recover Kshs 25,624,121.60/= being rent for the months of July, August, September and October 2021. It is pleaded that on 18 October 2021, the auctioneer carried out a successful auction and realised the sum of Kshs 6,500,000/= leaving a balance of Kshs 19,124,121.60/=. It is pleaded that the plaintiff filed an application dated 5 November 2021 before the tribunal challenging the auction. She denied converting the goods of the plaintiff and pleaded that these were sold by way of public auction. She denied that the plaintiff is entitled to the amounts claimed in the plaint or to general damages for unlawful eviction. She filed a counterclaim seeking the sum of Kshs 19,124,121.60/=:, costs of the suit, and any other relief deemed fit to grant.
4. On 30 January 2023, the defendant filed a preliminary objection challenging the jurisdiction of this court. It is claimed that one of the plaintiff's claims is based on conversion which is a tort hence this court has no jurisdiction to entertain the claim. It is also urged that the claim for loss of business and goodwill is a commercial claim outside the ambit of the jurisdiction of this court. It is urged that the plaintiff's claim lies within the jurisdiction of the High Court.
5. I directed the preliminary objection to be canvassed through written submissions and I have taken note of the submissions of Mr. Konosi for the defendant, and Mr. Mogeni for the plaintiff.
6. The cause of action herein arises out of the use of the premises known as Kisii Municipality/Block III/195. It is common ground that the plaintiff was a tenant in the premises. The plaintiff alleges that the defendant made illegal demands for rent, proceeded to send an auctioneer to proclaim her goods for alleged non-payment of rent, and finally evicted the plaintiff and converted her goods to its own use. She contends that as a result, she has suffered loss. She has of course made a claim of conversion of her goods, special damages for loss of business and general damages for unlawful eviction.
7. The jurisdiction of this court is provided in the Constitution and the Environment and Land Court Act. The Constitution provides as follows at Article 162 (2) and (3).
- (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –
 - (a) employment and labour relations; and



- (b) the environment and the use and occupation of, and title to, land.
 - (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).
8. The Environment and Land Court is the court contemplated in Article 162 (2) (b) with mandate to hear disputes relating to the environment and the use and occupation of, and title to, land. It will be observed at sub-article (3) that Parliament was to determine the jurisdiction and functions of the court.
9. Parliament did pass the [*Environment and Land Court Act*](#) and the jurisdiction of the Court is well elaborated at Section 13 of the said Act which provides as follows:-

13. Jurisdiction of the Court

- (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.
- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the [*Constitution*](#).
- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
- (5) Deleted by Act No. 12 of 2012, Sch.
- (6) Deleted by Act No. 12 of 2012, Sch.
- (7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
 - (a) interim or permanent preservation orders including injunctions;
 - (b) prerogative orders;



- (c) award of damages;
- (d) compensation;
- (e) specific performance;
- (f) restitution;
- (g) declaration; or
- (h) costs.

10. From the above, it will be seen that among the subject matter that the court has jurisdiction is “choses in action or other instruments granting any enforceable interests in land” and “any other dispute relating to land and environment.”
11. One of the instruments that give interest in land, and which can be enforced, is a lease and/or tenancy over land. Leases are covered by both the [Land Registration Act, 2012](#) and the [Land Act, 2012](#). Indeed, Part VI of the [Land Act](#) is titled “general provisions on leases” and Part IV of the [Land Registration Act](#), is titled “Leases.” Both the [Land Act](#), at Section 150, and the [Land Registration Act](#), at Section 101, do provide that the court with jurisdiction is the Environment and Land Court.
12. Apart from the above, tenancies can be of business premises or of residential premises and we have protected tenancies for both categories. For business premises, this is covered in the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), Cap 301, Laws of Kenya, and for residential premises, the [Rent Restriction Act](#), Cap 296, applies. The [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), establishes the Business Premises Rent Tribunal, whereas the [Rent Restriction Act](#) establishes the Rent Tribunal. Under Section 15 of the former Act, anybody aggrieved by a decision of the Business Premises Rent Tribunal is directed to lodge his appeal to the Environment and Land Court. Likewise the [Rent Restriction Act](#), pursuant to Section 8 thereof.
13. What I am trying to demonstrate is that issues related to tenancies fall within the jurisdiction of the Environment and Land Court Act. They will indeed fall within the jurisdiction of this court as tenancy relates to use and occupation of land for which, pursuant to Article 162 (2) (b) of the [Constitution](#), this court is vested with jurisdiction. Tenancy grants an enforceable interest in land, and where there is a tenancy agreement, that would be an instrument granting an enforceable interest in land as outlined in Section 13 of the [Environment and Land Court Act](#) which I have produced above.
14. The cause of action in this case arises out of a tenancy, and as I have taken the trouble to demonstrate above, tenancies fall within the jurisdiction of this court. When a person is on land as a tenant, it is common for such person to have goods on it. These may include furniture and fittings. There is of course a right of distress given to a landlord, and also a right to evict a tenant, and distress would be on goods not land. However, that right to distress arises out of a tenancy, and given that position, the court with jurisdiction to interrogate whether a landlord has properly exercised his right to distress, or to evict, would be the Environment and Land Court, for it is this court which is vested with jurisdiction to hear disputes relating to and arising out of tenancies and occupation of land.
15. Within this case, as I have pointed out earlier, but it is worth repeating, the plaintiff complains that she was issued with an illegal notice to pay rent. She complains that her goods were illegally distrained. She complains that the defendant illegally evicted her from the suit premises. Arising from that, she claims damages. Damages, as can be seen in Section 13 (7) (c) of the [Environment and Land Court Act](#) is one of the remedies that the court can grant. And as far as I can see, the claim of damages arises out of the deprivation to use and occupy land. The court, before going into the issue whether or not the plaintiff



is entitled to damages, must first determine whether the landlord properly levied distress and legally took over the use and occupation of the premises. The complaint of conversion of goods is tied to the fact with the fact that it was an exercise of the right of the landlord to levy distress under the tenancy. It is not conversion by a stranger. Before delving into determining whether or not there is conversion, the court has to determine whether or not the landlord properly exercised his right to levy distress, which again falls again within the tenancy, for which this court would have jurisdiction.

16. In my opinion, any issue arising out of a breach of tenancy, and damages resulting from disregard of a tenancy agreement, would fall within the jurisdiction of this court, for you cannot detach this from the tenancy. In the same vein, if one wishes to present a case of illegal eviction from land, which is precisely what the plaintiff complains about, this court would have jurisdiction.
17. To press the point home, let us assume that there is a case where one owns and possesses land and another person moves in and illegally evicts him from it. In the process of eviction, goods are damaged. If the plaintiff lodges a suit for illegal eviction and reinstatement back to the land, are we going to say that he should lodge a separate suit for damage to the goods which arose during the illegal eviction? I don't think so. The primary cause of action is the illegal eviction and the damage to the goods is collateral to that. This court, in my opinion, would have jurisdiction to hear all claims arising out of the illegal eviction in one suit. Indeed, bringing separate suits may invite the res sub judice or res judicata doctrines.
18. Within his submissions, Mr. Konosi presented an argument that this court would not have jurisdiction over torts and commercial transactions. That cannot be true. Trespass over land would be a tort. Can it really be argued that this court has no jurisdiction to hear a claim relating to trespass over land? And what is "commercial" so that it can oust the jurisdiction of this court? If one is engaged in buying and selling of land as a business, isn't that "commercial"? I have not seen a statute which says that there is a special category of jurisdiction called "commercial." What is important for our purposes is whether the issue arises out of use and occupation of land, and tenancy falls within this category. The plaintiff has not come to this court to enforce anything outside rights granted to a tenant within a landlord/tenant relationship.
19. The defendant himself has lodged in this court a counterclaim for unpaid rent arrears. I have not heard the defendant say that this court cannot hear her dispute regarding the alleged rent arrears, which is clearly a right of a landlord that arises out of use and occupation of land by another person. And if this court would have jurisdiction to hear the landlord's claim, how can it not have jurisdiction to hear the claims of the tenant? I just don't see how.
20. For the above reasons, I see no merit in this preliminary objection and it is hereby dismissed with costs.
21. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 29 DAY OF JUNE 2023.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT KISII

