



**Joint Limited v Karanja & 2 others (Civil Case E489 of 2020)  
[2022] KEHC 16071 (KLR) (Commercial and Tax) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 16071 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E489 OF 2020  
WA OKWANY, J  
NOVEMBER 24, 2022**

**BETWEEN**

**THE JOINT LIMITED ..... PLAINTIFF**

**AND**

**SUSAN KARANJA ..... 1<sup>ST</sup> DEFENDANT**

**MUNGAI KALANDE T/A MUNGAI KALANDE & COMPANY  
ADVOCATES ..... 2<sup>ND</sup> DEFENDANT**

**IMMEDIATE AUCTIONEERS ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Through the plaint dated November 23, 2020 the plaintiff seeks orders to restrain the defendants from selling its tools of trade and stock. Simultaneously with the plaint, the plaintiff filed an application dated November 23, 2020.
2. In response to the plaintiff's suit and application, the defendant raised a preliminary objection dated February 2, 2020 citing the following grounds:-
  1. This honourable court lacks jurisdiction in law to hear and determine the matter since the issue in dispute is based on a landlord-tenant relationship, which is a right to the use and occupation of land as is therefore the exclusive jurisdiction of the Environment and Land Court in accordance with the provisions of article 163(2)(b) of the *Constitution of Kenya*
  2. The application is bad in law and should be struck out with costs.
3. The preliminary objection was canvassed by written submissions which this court has considered.



4. The defendant's case was that the dispute between the parties concerns landlord and tenant relationship that falls under the jurisdiction of the Environment and Land Court by virtue of article 162(2) (b) of the Constitution. It was submitted that in order to make a determination on the legality of the distress for rent action, the court would have to first determine if the 1<sup>st</sup> defendant had legal title or interest over the property known as LR No 2019/1797.
5. The plaintiff, on the other hand, submitted that the dispute between the parties is with respect to the illegal proclamation of its tools of trade and stock and thus falls within the jurisdiction of this court. It was submitted that the plaintiff was a stranger to the 1<sup>st</sup> defendant as she was not a party to the lease agreement. It was further submitted that the court had the jurisdiction to hear and determine the plaintiff's suit.
6. I have considered the preliminary objection together with the parties' submissions. The main issue for determination is whether the preliminary objection was merited.
7. What amounts to a preliminary objection was discussed in *Mukisa Biscuits Manufacturing Co Ltd vs West End Distributors Limited* (1969) EA 696 as follows: -

“So far as I am aware, 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 the 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.”

8. The defendant challenged the jurisdiction of this court while stating that the dispute concerns landlord/tenant relationship and the right to the use and occupation of land.
9. It is trite that the issue of jurisdiction should to be determined at the earliest time possible. In *Owners of the Motor Vessel 'Lillian' (S) versus Caltex Oil (Kenya) Ltd* [1989] KLR1, it was held as follows:-

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court had 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. ....”

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court had cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these



characteristic. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

10. Article 162 (2) (b) of the Constitution 2010, mandates Parliament to establish courts with the status of the High Court to hear and determine disputes relating to among others, the environment, use and occupation of and title to land.

11. Section 13 of the Environment & Land Court Act No 19 of 2011 sets out the jurisdiction of the court. It provides in part as follows:-

“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 provision 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, conduct planning, title, tenure, boundaries rate, rents, valuation, mining, mineral, and other natural resources;

(b) Relating to compulsory acquiring 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.

(e) Any other dispute relating to the environment and land

12. In Suzanne Butler & 4 others v Redhill Investments & another (2017) eKLR the court held that:-

“When faced with a controversy whether a particular case is a dispute about land (which should be litigated at the ELC) or not, the courts utilize the Pre-dominant Purpose Test: In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works. The court must first determine whether the pre-dominant purpose of the transaction is the sale of land or construction. Whether the High Court or the ELC has jurisdiction hinges on the predominant purpose of the transaction, that is, whether the contract primarily concerns the sale of land or, in this case, the construction of a townhouse. Ordinarily, the pleadings give the court sufficient glimpse to examine the transaction to determine whether sale of land or other services was the predominant purpose of the contract. This test accords with what other courts have done and therefore lends predictability to the issue.”

13. I have perused the plaint dated November 23, 2020 wherein the plaintiff faults the defendant for proclaiming its tools of trade pursuant to distress for rent. The plaintiff's contends that it had not tenancy relationship with the 1<sup>st</sup> defendant and seeks an injunction to stop sale of the tools of trade.



14. I am of the view that the dispute herein is not with respect to the rent but rather seeks to stop the sale of the proclaimed goods. I find that this court has the jurisdiction to hear the matter. I therefore find no merit in the preliminary objection and hereby dismiss it with orders that costs shall abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF NOVEMBER 2022.**

**W. A. OKWANY**

**JUDGE**

**In the presence of: -**

**Mr. Masinde for Mungai for defendant**

**Ms Nekesa for Wathuta for plaintiff**

**Court Assistant- Sylvia**

