



ATC Kenya Operations Limited v Telkom Kenya Limited (Environment & Land Miscellaneous Case E157 of 2023) [2023] KEELC 18139 (KLR) (15 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18139 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E157 OF 2023**

**LN MBUGUA, J
JUNE 15, 2023**

BETWEEN

ATC KENYA OPERATIONS LIMITED PLAINTIFF

AND

TELKOM KENYA LIMITED DEFENDANT

RULING

1. This suit was filed contemporaneously with an application dated May 9, 2023. The plaintiff/applicant contends that it entered into various lease agreements with the respondent for its various base transceiver stations throughout the country of which the respondent was the landlord of the plaintiff. That even though the applicant has at all material times complied with the terms of the leases, the respondent has denied the applicant's servants and agents access to various leased sites in breach of the lease agreements.
2. The applicant hence prays for injunction orders against the respondent to be granted unrestricted access to the suit property.
3. In response, the respondent has filed a Preliminary Objection dated May 30, 2023 and an application dated June 2, 2023 where it contends that the suit herein is subjudice; that there exists other matters filed by the plaintiffs against the defendant namely Nairobi HCCC E096 of 2022 and Mombasa ELC 044 of 2023, hence this suit should be dismissed.
4. The prosecution of the Applications and the Preliminary Objection are under way of which the ruling thereof is slated for July 13, 2023.
5. The plaintiff has however sought interim orders in terms of prayer No. 3 in the application. "A temporary order of injunction restraining the respondent from entering..... the property LR. 3734/1402 Muthangari."



6. At the heart of the dispute is the issue of defendant's interference with the plaintiff's right to the suit property. That being the case, granting any orders at this stage will only convolute the dispute further.
7. I decline to grant any interim orders at this stage noting that the date of the substantive ruling is hardly a month away.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF JUNE, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Kahura for Plaintiffs/Applicant

Kyalo holding brief for Nyamburi for defendant

Court assistant: Philis

