



Maxsis Green Energy Limited v Maxxis Nanyuki Energy Limited & another (Environment and Land Appeal 13 of 2022) [2023] KEELC 19320 (KLR) (27 July 2023) (Judgment)

Neutral citation: [2023] KEELC 19320 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND APPEAL 13 OF 2022**

**AK BOR, J
JULY 27, 2023**

BETWEEN

MAXSIS GREEN ENERGY LIMITED APPELLANT

AND

MAXXIS NANYUKI ENERGY LIMITED 1ST RESPONDENT

DERRICK KIMATHI 2ND RESPONDENT

JUDGMENT

1. The genesis of this appeal is that the Appellant filed suit in the Chief Magistrates court alleging that the 2nd Respondent had without the knowledge or consent of the other company directors, fraudulently and with the intent to steal the Appellant's business, changed the business name of the Appellant to Maxxis Nanyuki Energy LPG Plant. It contended that that was done without a resolution to effect the changes and that the 2nd Respondent did not disclose his interest in the business. It sought a permanent injunction to restrain the Respondents from interfering with the Appellant's ownership of the business, an order for revocation of the licenses fraudulently issued to the Respondents in relation to the business, general damages for breach of duty and costs of the suit.
2. Being dissatisfied with the ruling delivered by the Learned Chief Magistrate, Hon. B. Mararo on 4/10/2022, the Appellant lodged this appeal. The main grounds of appeal are that the Learned Magistrate erred (sic) by stating that the Respondents were the owners of the LPG business on the land known as Nanyuki Marura Block III/9831 and that the court erred by stating that the Respondents were in possession and ownership of the business yet the 1st Respondent is non-existent and the 2nd Respondent had resigned from the Appellant company. It faulted the Learned Magistrate for issuing the business to the Respondents by reinstating them to the suit property and removing the youth, servants and agents of the Appellant situated at the property and denying them quiet possession of the property.



3. Further, it faulted the Learned Magistrate for noting that the matter involved directorship of the Appellant yet failing to appreciate the Appellant's evidence and submissions and releasing the business to the Respondents. It also faulted the Learned Magistrate for issuing eviction orders against the Appellant without determining who was in ownership of the business before the orders of 5/7/2022 were vacated.
4. Additionally, it faulted the Learned Magistrate for entertaining the matter and continuing to issue orders in the matter which were conclusive after finding that the court had no jurisdiction. Lastly, it argued that the Learned Magistrate caused a miscarriage of justice by failing to consider the issues raised in the plaint which ought to be placed before a court with jurisdiction for hearing and determination. The Appellant prayed for its appeal to be allowed and the ruling of the Learned Magistrate set aside.
5. The court gave directions for the appeal to be canvassed through written submissions. The Appellant gave the background to the case. It filed suit contemporaneously with an application for injunction pending hearing of the application and the suit. No orders were issued. It changed advocates and filed another application seeking the similar orders on 5/7/2022 pursuant to which interim orders were granted. On 12/7/2022, the Respondents filed an application seeking to remove a party from the proceedings. The application was dismissed and the court made an order for the maintenance of the status quo. On 20/7/2022 the Respondent filed a preliminary objection on jurisdiction arguing that the dispute involved a company and its directors. On 9/9/2022, the Respondents filed an application to be reinstated to the business premises on the ground that they were in possession of the business and property when the order for status quo was made. The preliminary objection and application filed on 9/9/2022 were canvassed through written submissions and the court delivered its ruling on 4/10/2022.
6. The Appellant identified the issues for determination as being whether the court had jurisdiction to entertain the application and the entire suit and whether the orders issued by the court caused a miscarriage of justice. The Appellant submitted that it was common ground that the dispute concerned fraud, land and company directors.
7. It argued that disputes touching on directors ought to be addressed under Part XI of the [*Company's Act* 2016](#) which stipulates that such disputes are to be handled by the High Court. The Appellant urged that the trial court should have downed its tools when it realised that it did not have jurisdiction. The Appellant cited several decisions on the point that jurisdiction goes to the root of litigation and without it a court has no power to take a step further in the matter.
8. On the issue of miscarriage of justice, the Appellant contended that the orders issued by the trial court were conclusive in nature and that they denied it an opportunity to argue its case before a court with jurisdiction. That through the evidence tendered, the trial court ought to have known the position of the property before issuing the orders of status quo and if the orders were not complied with an application for contempt should have been made but not evicting the Appellant from the property. It urged that reinstating the Respondents who had resigned from the Appellant back to the business property and declaring the LPG business as belonging to the Respondent defeated the main purpose of the suit and occasioned an injustice.
9. In their submissions, the Respondents also gave the background to the dispute. The 2nd Respondent submitted that it was the registered lessee of the suit property based on a lease he entered into with Hedman Kirimi Wamitaro, the registered owner of the land. That being a director of the 1st Respondent, he got into the business of setting up an LPG processing plant after obtaining the necessary permits. That on 1/4/2022 the Appellant moved the court seeking orders to regain possession of the suit property after the 2nd Respondent had kicked him out. According to the



- Respondent, the court erroneously issued orders on 5/7/2022 granting the Appellant possession of the property and injunctive orders against a third party who was not a party to the suit.
10. The Respondents filed the application dated 8/7/2022 seeking to set aside those orders. They also filed a preliminary objection challenging the jurisdiction of the court to entertain the matter because the dispute revolved around directors and the issue of licenses, which fell within the jurisdiction of the High Court and the regulatory authority on energy and petroleum. They stated that the court upheld the preliminary objection and issued orders reversing the erroneous decision, vide which the court had granted the Appellant possession of the property.
 11. The Respondents pointed out that the Appellant did not supply a copy of the order or decree they were appealing from. They argued that the Learned Magistrate did not delve into the merit of the suit and that the court did not declare the Respondents as the owners of the business or direct who was to take over the business.
 12. The Respondents contended that in issuing the orders of 4/10/2022 the court was merely correcting an illegality that it had made after being misled by the Appellant who had evicted the Respondents and taken possession of the suit property on the strength of the orders made on 5/7/2022. They emphasised that in allowing the application dated 7/9/2022, the court was nearly interpreting what the status quo was.
 13. The Respondents concluded that the Appellant did not dispute the fact that the magistrates court did not have jurisdiction to hear and determine the suit. Their grievance is that the Learned Magistrate should have stayed the suit and allowed them to refer the matter to a court of competent jurisdiction. In the Respondents' view, this could not have happened because the Magistrates Court where the suit was filed did not have jurisdiction to begin with. They cited decisions supporting the view that one cannot transfer a matter from a court without jurisdiction because such a suit was incompetent and there was nothing to transfer.
 14. The issue for determination is whether the court should set aside the ruling of the Learned Magistrate delivered on 4/10/2022 and have the matter placed before a court with competent jurisdiction for hearing and determination. A reading of the averments in the plaint shows that the Appellant's claim against the Respondents is predicated on the ownership and running of a business dealing with LPG in Nanyuki.
 15. It is common ground that the proper forum to determine the dispute relating to ownership of the LPG business and the directorship of the company is the High Court. Once the issue of lack of jurisdiction by the magistrate's court to deal with the dispute was raised, the Appellant ought to have withdrawn the suit and filed a proper one before the High Court. The Magistrates Court has no power to transfer a civil suit to the High Court.
 16. Not being a dispute relating to land or the environment, this court lacks jurisdiction to deal with the appeal.
 17. Appeal is dismissed. Each party will bear its own costs.

DELIVERED VIRTUALLY FROM NAIROBI THIS 27TH DAY OF JULY 2023.

K. BOR

JUDGE

In the presence of:

Ms. Susan Nyakundi for the Appellant



Mr. Amos Chweya for the Respondent

