



Jefwa & 430 others (The Names of the other 427 Plaintiffs Above-Stated are Stated in the Authority to File Suit and List Exhibited on the Affidavit in Support of the Application Herein) v Zumzum Investments Limited; Regional Container Freight Station Ltd & 3 others (Interested Parties) (Environment & Land Case 139 of 2020) [2023] KEELC 20141 (KLR) (27 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20141 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 139 OF 2020
NA MATHEKA, J
SEPTEMBER 27, 2023**

BETWEEN

**FONDO KARISA MTANGI MANYESO CHARO JEFWA 1ST PLAINTIFF
KENGA NGARI KOMBO 2ND PLAINTIFF
HALIMA ABDALLAH OMAR 3RD PLAINTIFF
GITARI J. KENNEDY MICHENI & 427 OTHERS 4TH PLAINTIFF**

**THE NAMES OF THE OTHER 427 PLAINTIFFS ABOVE-STATED ARE
STATED IN THE AUTHORITY TO FILE SUIT AND LIST EXHIBITED ON THE
AFFIDAVIT IN SUPPORT OF THE APPLICATION HEREIN**

AND

ZUMZUM INVESTMENTS LIMITED DEFENDANT

AND

**REGIONAL CONTAINER FREIGHT STATION LTD INTERESTED PARTY
AKABA INVESTMENT LTD INTERESTED PARTY
TRANSOUTH CONVEYORS COMPANY LTD INTERESTED PARTY
JOVAN H. KARIUKI T/A MORAN AUCTIONEERS INTERESTED PARTY**



RULING

1. The application is dated May 29, 2023 and is brought under Order 1, Order 8 rule 3, Order 11 Title 3, Order 40 Rules 6, Order 45 Order 51 Rule 1 of the Civil Procedure Rules, section 1A, 1B and 3A of the Civil Procedure Act seeking the following orders;
 1. That the honourable court be pleased to certify this matter urgent and dispense with service of this motion at the first instance and hear the same ex parte.
 2. That the honourable court be pleased to join the 1st 2nd 3rd and 4th parties as interested parties.
 3. That the honourable court be pleased to order a temporary injunction do issue restraining the defendant, 1st, 2nd 3rd & 4th Interested Party by themselves their servants, employees and or other person acting under their instructions from auctioning, selling, leasing, trespassing and/ or interfering in any way with the Plaintiffs' quite possession, use and occupation of the suit properly being plot number 1482/11/MN and all the resultant sub divisions thereto situated in Kiernbeni Mombasa County pending interparty hearing of this application.
 4. That the honourable court be pleased to order a temporary injunction do issue restraining the defendant, 2nd 3rd & 4th interested party by themselves their servants, employees and or other person acting under their instructions from auctioning, selling, leasing, trespassing and/ or interfering in any way with the Plaintiffs quite possession use and occupation of the suit property being plot number 1482/11/MN and all the resultant sub divisions thereto situated in Kiernbeni Mombasa County pending interparty hearing of this suit.
 5. That an Order do issue directing the Officer Commanding Station (OCS) Kiernbeni Police Station to ensure compliance with the Orders issued by the Honourable Court.
 6. That the costs of this application be provided for,
2. It is supported by the annexed affidavit of Fondo Karisa Mtangi the 1st plaintiff/applicant and on the following main grounds that the suit subject of these proceedings have been advertised by the 4th interested party for sale by way of an Auction on the June 5, 2023. The plaintiffs have just discovered that their existed a suit between the interested parties herein and the defendant herein i.e. Mombasa High Court Civil Suit No 116 of 2016 Regional Container Freight Station Limited & others vs Zumzum Investment Limited. The interested parties were awarded costs of Kshs 12,248,092.34 against the defendant herein who have now instructed the 4th interested party to recover the said sum by way of auctioning the suit property subject of these proceedings. That the sum total resulting from the proceedings in Mombasa High Court Civil Suit No 116 of 2016 Regional Container Freight Station Ltd & others vs Zumzum Investments Limited which the defendant herein is expected to pay is over one billion i.e. Kshs 1.592 512 631.61. which is a colossal amount. The plaintiffs/applicants are now apprehensive that the suit property will be auctioned and the suit property transferred to unsuspecting member of the public, thus further complicating the dispute. That unless the Orders sought are issued. The suit property will be sold by way of an auction or transferred to third parties and may become impossible to have it revert to its original state, there is thus likelihood that the plaintiffs/applicants will suffer irreparable harm and loss of the suit property. The plaintiffs/applicants are now very apprehensive that unless the Orders ought do issue the defendant and interested parties will continue unabated to transact and dispose of the suit property and further compound this matter. The plaintiffs stated that the interested parties want to attach and sale by way of public auction Plot No.



LR 1481/11/MN as per their notification of sale. The Defendants submitted that the High Court and this court are courts of equal status and none of the said courts has powers to supervise the other. That this court lacks jurisdiction to stop execution in HCCC No, 116 of 2016. That the applicants should simply file objection proceedings in that file for the Judge there to make a determination.

3. This court has considered the application and submissions therein. It is trite that the jurisdiction of a Court can neither be implied nor conferred by agreement of parties, by judicial craft or legal sophistry, it must be expressly provided for in the Constitution or in statute. This is holding of Supreme Court in the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* (2012) eKLR, where it held that;

A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings." (Emphasis added)

4. It therefore follows that the jurisdictional remit of the Environment and Land Court is donated by article 162 of the Constitution which establishes the three tiers of Kenya's Superior Courts. It provides thus;

- 1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2)
- 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)
- 4) The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.

5. Parliament enacted the Environment and Land Court Act and set out in details, the jurisdiction of the court. Section 13 of the Act outlines the jurisdiction of the court 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 interest 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 health 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
- 6) Deleted by Act No. 12 of 2012
- 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; or
 - g) declaration; or
 - h) costs

6. In the Kenyan court system, which is hierarchical in nature, judges of concurrent jurisdiction do not possess supervisory jurisdiction over each other. No judge of the Environment and Land Court can superintend over fellow judges of that court or of the superior courts of equal status. It has, moreover, been expressly stated in article 165(6) of the [Constitution](#) in these terms;

The High Court has supervisory jurisdiction over the subordinate courts and over any other person, body or authority exercising a judicial or quasi judicial function, but not over a superior court.”

7. In the case of [Peter Nganga Muiruri v Credit Bank Ltd & 2 others](#) Civil Appeal No 203 of 2006 the court stated as follows;

It would be a usurpation of power to push forward such an approach, and whatever decision emanates from a court regarding itself as a constitutional court, with powers of review over decisions of concurrent or superior jurisdiction, such decision is at best a nullity.”



8. The plaintiffs stated that the interested parties want to attach and sale by way of public auction Plot No. LR 1481/11/MN as per their notification of sale as per the decision in Mombasa High Court Civil Suit No 116 of 2016 Regional Container Freight Station Limited & others vs Zumzum Investment Limited. That this court should stop that execution forthwith. The position is so well established that it would be a strange for this court to review pronouncements of Judges of the same status as herself, a task that is left to courts and judges of higher status in the hierarchy, by way of appeals.

9. In the case of *Civicon Limited v Kenya Revenue Authority & another* (2014) eKLR, the court held that;

I agree with the judicial policy that is variously set out by the authorities relied by the 2nd respondent-*Peter Ng'ang'a Muiruri v Credit Bank Ltd & anor*, Court of Appeal Civil Appeal No 203 of 2006 and *Ventaglio International SA and anor v The Registrar of Companies and anor*, Nairobi HC Constitutional Petition No 410 of 2012 (per Lenaola, J) that the High Court's Constitutional Division, indeed any other Division, cannot supervise any other superior court of concurrent jurisdiction or superior jurisdiction. The supervisory jurisdiction is over subordinate courts under article 165(6) of the *Constitution*. I also consider that it is an abuse of the court process for a litigant to seek to obtain through a constitutional petition or indeed any to other court process before the same court of concurrent jurisdiction a different decision from one already rendered by the court in other proceedings over the same matter. The aggrieved party must be content with the devices of appeal or review of the decision already delivered by the court but cannot be permitted to re-agitate the matter through a constitutional petition or other originating proceedings. See *Beta Healthcare International Ltd v Commissioner of Customs, and 2 others*. Nairobi HC Petition No. 125 of 2010 (per Majanja, J.)”

10. I concur with the above observations and the Plaintiffs submissions that as a Judge of the Environment and Land Court I have no jurisdiction to enquire into or review the propriety of the decisions of the High Court Judge, who are of concurrent jurisdiction as herself. I find this application is without merit and I dismiss it with costs.

11. It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 27TH DAY OF SEPTEMBER 2023.

N.A. MATHEKA

JUDGE

