



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CIVIL CASE NO. 2 OF 2018

HYDROMASTERS DRILLING COMPANY LTDPLAINTIFF

VERSUS

NGONG BUTCHERY CO-OPERATIVE LTD.....1ST RESPONDENT

CASH CROP AUCTIONEERS.....2ND RESPONDENT

RULING

The applicant filed a notice of motion dated 29th January, 2018 pursuant to **Section 1A, 1B, 3A and 63** of the Civil Procedure Act Order **40 Rule 1 Order 51 Rule 1, 2, 3, 8 and 10** of the Civil Procedure Rules against the respondents seeking orders of injunction to restrain the respondents agents, servants from dealing, alienating by way of sale and or attachment of the applicant's property proclaimed by the 2nd respondent dated 26th January, 2018 Pending the hearing and determination of the application.

In the first instance the applicant moved this court under certificate of urgency which issued interim conservatory orders pending hearing of the application inter-parties.

Both parties have since filed the respective affidavit of the matter. Prior to the hearing of the application the respondent filed a preliminary objection challenging the jurisdiction of the court as articulated under **Article 165 (2), 5(b)** of the constitution, and the Environment and Land Act **No 19 of 2011**. The applicant filed a response posing the point on jurisdiction raised by the respondents. I have given a second thought of the matter and the genesis of the application giving rise to the dispute.

“How does the matter before this court arise”?

The applicants have been tenants of the 1st respondent in the premises known as **LR 231/3 Ongata Rongai** in Kajiado County. The tenancy agreement was reduced into writing and registered under the Titles Act. A dispute has arisen on the occupancy, purposes, obligations on the part of the applicant and 1st respondent relationship.

The applicant herein filed a claim before the chief magistrate in Milimani Nairobi in Misc. Application **No.929 of 2017** as per the extracted order marked **MM6**.

In the second shot on the matter a reference was filed at the Business Premises Tribunal in Case No. **700 of 2017**. The tribunal struck out the application of being incompetent. The next stop for the applicant was before this court seeking similar reliefs touching on the disputes in respect to the lease agreement.

During the hearing of this application the respondent raised the preliminary point on jurisdiction. Both Counsels agreed to file written submission on the substantive notice of motion and the preliminary objection. The information thereof before the court is sufficient to dispose off the issue of jurisdiction in the first instance. The decision in the **Lillian Motor Vessels** case is by no means the last word on the subject of jurisdiction. Infact other recent decisions from the apex courts have buttressed the position in law, **Mumo Matemo vs. Trusted society of Human rights**

Alliance & 5 Others EKLR, Kenya commercial Bank Ltd vs Banjo Amarigamated limited & another EKLR. Wherein unanimous the courts have stated *inter alia* **“a court does not have the power by a judicial fiat to extend its jurisdiction over a matter beyond the scope of the authorities granted to it by its creators”.**

The constitution under **Article 165 2(b)** established courts of equal status to hear and determine disputes to the environment, and use, and occupation of, and title to land.

Parliament has vested the courts exclusive jurisdiction over disputes arising out of land and environment by enacting the Environment and Land Court Act **19 of 2011**.

By this act as outlined under **Section 13 (2)** of the said act it has withdrawn from other courts or power in any circumstances to entertain, maintain and enforce proceedings against such disputes as defined in **Section 13**.

Therefore the action by the applicant on lease tenure with the 1st respondent was not only merely erroneous but beyond the power and jurisdiction of this court. Granted that the applicant asks me to hold otherwise will be to some extent circumvent the intent of the legislature as this courts has no jurisdiction pursuant to **Article 165 2(b)** of the constitution and **Section 13 (2)** of the Environment and Land Court **Act 19 of 2011**. I am also guided by the decision of the superior courts in the *Lillian Motor Vessel, Republic vs. Karisa Jengo and 2 Others 2017 (KLR) Mumo Matemo Supra, Kenya Commercial Bank Ltd vs. Benjo Amarigamated Supra.*

The effect of these judicial decisions demonstrate that this court has no powers donated by the constitution or statute to entertain any of the issues in the dispute. The purported conservatory orders issued on 2nd February, 2018 under the assumption of this court are therefore void abinitio.

The dispute as raised by the applicant squarely falls within the ambit of **Section.13 (2)** of the Environment and Land Court Act for which the forum is fit to entertain the subject matter.

For the reasons stated herein I down tools for want of jurisdiction in the matter.

Accordingly this suit is hereby marked as withdrawn and parties directed to file it in the proper forum. Costs of this application be in the cause.

Dated, delivered in open court on 20th March, 2018.

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R. NYAKUNDI JUDGE

Mr. Nyamweya for Wainyoike for the applicant present, Plaintiff Counsel- absent.