



**Gachanja v Kariuki (Environment & Land Case E148 of 2022)
[2023] KEELC 22134 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 22134 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E148 OF 2022
BM EBOSO, J
NOVEMBER 29, 2023**

BETWEEN

CATHERINE MINAYO GACHANJA APPELLANT

AND

JOEL GACHANJA KARIUKI RESPONDENT

RULING

1. The plaintiff initiated this suit through a plaint dated 28/11/2022. Her case is that, at all material times, she entered into a co-ownership arrangement with the defendant in relation to Villa No 34 erected on Land Reference Number 29084, Redhill Estate, Limuru [the Villa]. The Villa was to be purchased by the two parties at Kshs 20,000,000. In pursuance of the co-ownership arrangement, she took a loan and contributed Kshs 3,666,866 towards joint acquisition of the Villa. The defendant contributed the rest of the purchase price. The co-ownership arrangement was formalised into a written co-ownership agreement dated 25/6/2019, duly executed by the parties.
2. The plaintiff contends that she took possession of the Villa and utilized it as a home until May 2021 when the defendant unlawfully evicted her in total breach of the terms of the co-ownership agreement dated 25/6/2019. It is her case that the defendant has been in exclusive possession of the Villa since then, in breach of the co-ownership agreement which provided that the Villa would be used as a home for her and their daughter, CWG.
3. The plaintiff sought the following reliefs against the defendant:
 - a. An order that the suit property be valued at the current prevailing market price, sold and proceeds be divided as between the plaintiff and the defendant in their share of contribution towards the purchase of Redhill Estate Villa Number 34, Nandi type on Land Reference number 29084 or alternately the defendant buys out the plaintiff's share;



- b. Rent paid by the plaintiff for the entire period since the unlawful eviction by the defendant from Redhill Estate Villa Number 34, Nandi type on Land Reference Number 29084;
 - c. Costs of this suit; and
 - d. Any other order that this honourable court may deem fit to grant in the interest of justice.
4. Upon being served with papers relating to the suit, the defendant entered appearance and simultaneously filed a notice of preliminary objection inviting the court to strike out the suit *in limine* on the following verbatim grounds;
 - a. This honourable court lacks jurisdiction to hear this suit because the subject matter of the suit is a debt/money owed.
 - b. The dispute between the parties herein is not about land or land related.
 - c. The suit herein is bad in law, an abuse of court process and should be dismissed with costs.
 5. The preliminary objection was canvassed through written submissions dated 31/5/2023, filed by M/s Ruiru Njoroge & Associates. The plaintiff contested the preliminary objection through written submissions dated 8/6/2023, filed by M/s Mukele & Kakai LLP.
 6. The gist of the defendant's objection is that the subject matter of the suit is a debt/money owed and the same should not be before this court. Citing paragraphs 3, 4 and 7 of the plaint, the defendant contends that the cause of action in this suit is "purely contractual in nature based on alleged breach of contract involving exchange of money hence the same falls outside the scope of matters that can be entertained by this".
 7. Counsel for the defendant contended thus:

"We further submit that the dispute between the parties is not about land or land related but rather it is about money matter and should be dismissed for want of jurisdiction and/or at best transferred to the magistrate court which has jurisdiction to entertain the same."
 8. The position of the plaintiff on the question of jurisdiction is that the dispute in this suit involves the determination of the property rights of the plaintiff as a co-owner of the Villa and a determination of the question as to whether the defendant violated the property rights of the plaintiff by evicting her. The plaintiff adds that it is not in dispute that the dispute is about ownership, title, occupation and use of the Villa. It is the case of the plaintiff that this court is the proper court to adjudicate the dispute.
 9. I have considered the preliminary objection together with the rival submissions. Two key issues fall for determination in the preliminary objection. The first issue relates to the question as to what is the dominant issues in the dispute in this suit. The second issue is the question as to whether this court is the proper court to adjudicate the dominant issues in the dispute. I will make brief sequential analysis of the two issues in the above order.
 10. I have read the pleadings that are before court. The substantive case of the plaintiff is that she is a co-owner of Villa Number 34. To support that contention, she has placed before the court a co-ownership agreement dated 25/6/2019. The agreement is expressed as affirming the co-ownership. Further, the agreement contains a framework on utilization and occupation of the Villa. The plaintiff contends that she was in occupation of the Villa as a co-owner and in tandem with the parties' mutual agreement. It is her case that the defendant illegally evicted her. She wants the co-ownership arrangement terminated through sale of the Villa and division of the sale proceeds. In the alternative, she wants the defendant



to buy her share based on the current market value of the Villa. Further, she wants damages equivalent to rent she has been paying after what she terms as illegal eviction.

11. From the above analysis, it is clear that the following are the dominant issues that fall for determination in the main suit.
 - a. The question as to whether the plaintiff is a co-owner of the Villa;
 - b. Whether the defendant holds the Villa in trust for the two of them;
 - c. Whether the plaintiff was entitled to occupy the Villa;
 - d. Whether the plaintiff was illegally evicted from the Villa; and
 - e. Whether the alleged co-ownership and trust should be terminated.
12. Is this court the proper court to determine the above dominant issues? The answer to the above question is found in Article 162(2) (b) of the Constitution which provides as hereunder:
 - “(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
 - (a)
 - (b) the environment and the use and occupation of, and title to, land.”
13. Disputes about ownership/title to land; occupation of land; use of land and all ancillary questions relating to use, occupation and title to land are for the Environment and Land Court. The issues identified in the preceding paragraph fall within the broad jurisdiction that is set out in Article 162 (2) (b) of the Constitution.
14. For the above reasons, it is my finding that the dominant issues in this suit fall within the jurisdiction of the Environment and Land Court. The result is that the preliminary objection dated 13/12/2022 is devoid of merit. The same is rejected for lack of merit. The defendant shall bear costs of the preliminary objection.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 29TH NOVEMBER 2023

B M EBOSO

JUDGE

In the presence of: -

Mr Ruiru for the defendant

Court Assistant - Hinga

