



**Primus Africa Limited v Nnbe; Mizizi Homes Limited (Interested Party)**  
**(Environment and Land Miscellaneous Application E037 of 2023)**  
**[2023] KEELC 21997 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21997 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E037 OF 2023**  
**J OMANGE, J**  
**NOVEMBER 23, 2023**

**BETWEEN**

**PRIMUS AFRICA LIMITED ..... APPLICANT**

**AND**

**FRANCIS CHARLES NOSIKE NNBE ..... RESPONDENT**

**AND**

**MIZIZI HOMES LIMITED ..... INTERESTED PARTY**

**RULING**

1. The application dated 4<sup>th</sup> August, 2023 sought the following orders;
  1. That the application be certified urgent, service thereof be dispensed with and the same be heard ex parte in the first instance.
  2. That pending the hearing and determination of this application inter partes, this honourable court be pleased to issue an injunction restraining the Respondent either by himself, his agents, his representatives, his servants and/or any other person authorized by him or otherwise from terminating the joint venture agreement dated 31<sup>st</sup> December 2020 and from throwing out or evicting the plaintiff from the project site known as LR No. 3734/430 Chalbi Drive Lavington and from interfering with the plaintiff's continued implementation of the Joint Venture Agreement or in any manner acting in breach of the express provisions of the said Joint Venture Agreement.
  3. That pending the hearing and determination of this application inter partes, this honourable court be pleased to issue an injunction restraining the Respondent either by himself, his agents, his representatives, his servants and/or any other person authorized by him or otherwise from



violating the provisions of the Joint Venture Agreement or acting in any other manner contrary to its express provisions and in particular clause No 19 thereof.

4. That an injunction do issue restraining the Respondent either by himself, his agents, his representatives, his servants and/or any other person authorized by him or otherwise from terminating the Joint Venture Agreement dated 31<sup>st</sup> December 2020 and from throwing out or evicting the Plaintiff from the project site known as LR No 3734/430 Chalbi Drive Lavington or from interfering with the Plaintiff's continued implementation of the Joint Venture Agreement or in any other way interfering with the project site pending the reference, hearing and determination of the dispute through the structured dispute resolution mechanism envisaged under Clause 19 of the Agreement dated 31<sup>st</sup> December 2020.
5. That the cost of this application be borne by the Respondents.
2. The application is brought upon the grounds that the parties entered into a joint venture agreement under which the parties agreed to construct ten town houses together with associated amenities on the suit property. A dispute has arisen between the parties as to their respective rights and obligations under the agreement. Clause 19 of the Agreement incorporated a tiered dispute resolution mechanism comprising of consultation in good faith, mediation and arbitration. It is the Applicant's contention that the Respondent has refused to explore the dispute resolution mechanism provided in the agreement and is intent on unilaterally terminating the agreement. The applicant sought for an order of injunction restraining the Respondent from evicting the applicant from the project site known as LR No. 3734/430 Chalbi Drive Lavington and from interfering with the Plaintiffs implementation of the Joint Venture Agreement.
3. The defendant raised a preliminary objection on three grounds namely;
  1. The dispute between the parties herein is purely contractual in nature and does not relate to environment, use, occupation or title to the land for this honourable court to assume jurisdiction thereof.
  2. The matter in issue does not fall within the jurisdiction of the Environment and Land Court given the court's jurisdiction under article 162 (2) of the Constitution and section 13 of the Environment and Land Act 2011. See also the Court of Appeal's decision in Cooperative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others (2017) Eklr.
  3. The entire proceedings are fatally incompetent having been commenced without prescribed process for originating legal action. The orders sought are in a vacuum.
4. Counsel for the Respondent argued that this court does not have jurisdiction as the suit arises out of a dispute on the rights and obligations of the parties arising from the contract herein. Counsel for the applicant on the other hand urged the court to invoke article 159 of the Constitution to find that it has jurisdiction.
5. The first issue that the court must determine is whether this court has jurisdiction. I have considered the submissions by both counsel on this issue. The oxford dictionary defines jurisdiction as the power to make legal decisions and Judgements. In other words, a court without jurisdiction is not empowered to make a determination in a matter.



6. I reiterate the often repeated words in the now famous case of “Owners of Motor Vessel “Lilian S” – Versus - Caltex Oil (Kenya) Limited (1989) IKLR dealt with a court, jurisdiction thus:-

“Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of the proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion it is without jurisdiction.....where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgement is given”.

7. This court is a creation of article 162 (b) of the Constitution which donates to parliament the power to establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of and title, to land.

8. The Environment and Land Court Act at section 13 defines the jurisdiction of the court thus;

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 interests in land; and
  - e. any other dispute relating to environment and land.

9. In the current case the dispute as clearly stated by the applicant is on the rights and obligations of the parties arising from a joint venture agreement which is a contract. There is no dispute regarding the land. It could be argued that this contract arises from land use hence the Environment and Land Court could have jurisdiction.

10. However, this question was laid to rest in the case of Cooperative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others (2017) determined that the ELC jurisdiction to deal with disputes connected to ‘use’ of land and do not include mortgages, charges, collection of dues and rents which are within the civil jurisdiction of the High Court. I find that Joint venture agreements is a contract and falls within this category. Consequently, I find that this is a matter that should be heard in the Commercial Division. The file is to be transferred to the Commercial Division for hearing and determination. Costs to abide the determination of the application.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 23<sup>RD</sup> DAY OF NOVEMBER 2023.**

**Judy Omenge**

**JUDGE**



**In the presence of: -**

No appearance by the parties

Steve - Court Assistant

