



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

HIGH COURT CIVIL CASE NUMBER 82 OF 2014 (O.S)

**IN THE MATTER OF THE TRANSFER OF LEASE BY LEASEE TO AN ILLEGAL ENTITY
TWIGA ROSES**

AND

**IN THE MATTER OF THE LAND REGISTRATION ACT NUMBER 3 OF 2012 AND IN THE
MATTER OF THE COMPANIES ACT CAP 486 LAWS OF KENYA**

AND

**IN THE MATTER OF THE EVICTION FROM THE DELIVERY OF VACANT POSSESSION
OF THE PREMISES COMPRISING LAND REFERENCE NO. 12248/16, LR NO 12248/17 AND
LR. NO 12248/18 NAIVASHA SOUTH LAKE AREA BEING PORTION OF THE ESTATE
ERECTED AND BEING ON ALL THAT PIECE OF LAND KNOWN AS GRANT NUMBER LR
31135 NAIVASHA.**

BETWEEN

SERAH NYAMBURA T/A CRAYFISH CAMP.....PLAINTIFF/RESPONDENT

VERSUS

TWIGA ROSES.....DEFENDANT/APPLICANT

RULING

1. Twiga Roses, in its Notice of Motion dated 17th August 2015 premised on the provisions of **Order 40 Rule 1(a), Order 51(1)** of the **Civil Procedure Rules** seeks the following orders against the Plaintiff/Respondent, Sarah Nyambura trading as Crayfish Camp.

1. spent

2.spent

3. *Pending the hearing and determination of this suit, there be an order of injunction restraining the plaintiff whether by herself, her employees, beneficiaries, servants or agents including Mr. Paul Ole Yiaile Trading as Nasioki Auctioneers from attaching, proclaiming, selling or otherwise dealing with the defendants or the defendant's associates' goods wherever situated.*

4. *The costs of this application be awarded to the defendant.*

2. On the 19th August 2015, interim orders of junction were issued by the court in terms of prayer 2 in the application.

3. The grounds upon which application is brought are that the Respondent through its agents, Nasioki Auctioneers proclaimed its goods on the 5th August 2015 and issued a fourteen(14) days notice for payment of alleged rent arrears failing which they would attach and sale the said goods to recover the rent stated at Kshs.200,000,000/= and auctioneers fees. It is further stated that the matter of the lease agreement and by implication the rent dispute are subject of other cases filed in the Environment and Land Court and also in this court, these being **Nakuru HCCC No. 351 of 2010** and **Nakuru HCCC No. 141 of 2012** between the same parties.

It is further a ground that the applicant is upto date and has prepaid the rent due hence no basis upon which distress for rent could be levied.

4. In opposing the application, the Respondent filed grounds of opposition on the 7th December 2015 that the applicant has no *locus standi* to bring the application, that the court is *functus officio*, and that the application offends the threshold set out in **Giella -vs- Casman Brown(1973)e KLR** case.

5. This court has considered the application, the affidavit in support and the grounds of opposition as filed.

In its ruling dated the 11th June 2015, following an application by the Respondent Sarah Nyambura T/A Cray Fish Camp, this court, upon application by the respondent seeking various orders including eviction of the applicant from the lease premises for failure to pay rent arrears, land rates and dues to the Government and also permanent injunctions, and declarations of trespass, the court pronounced itself that all the prayers sought were baseless, meritless and proceeded to dismiss the said application dated 20th November 2014. In the said ruling the court took note that the Respondent has filed several cases against the applicant on the same issues on the lease and rent disputes. These cases are yet to be prosecuted.

6. Without going into the merits or otherwise of the present application, the court makes the following observations and findings:

That this case, by its very nature, concerns disputes relating to leases over land parcels **No.12248/16, LR No.12248/17** and **L.R. No.12248/18** Naivasha South Lake.

The **Environment and Land Court Act, Chapter 12A Laws of Kenya** was established to give effect to **Article 162(2) (b) of the Constitution**. Its Jurisdiction as stated in **Section 13** is to hear and determine all disputes relating to environment and land use and specifically, disputes.

(a) relating to environment planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining minerals and other related 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. The Act came into force on the 30th August 2011.

7. Under the **Land Registration Act No.3 of 2012, Section 2**, a disposition is interpreted to meaning:

(a) a sale, charge, transfer grant, partition, lease assignment --- and includes creation of an interest in land or lease or any other act by an owner of land or under a lease whereby the persons rights over that land or lease are affected.

From the above definition and interpretation, a lease is an enforceable interest in land, whether registered or not. To that end, and as mandated by the **Constitution Article 162 (2) (b)**, disputes relating to land use, leases, rates, rents are to be heard and determined by the Environment and Land Court.

8. There is no doubt that issues in this case and the others filed by the Respondent against the Applicant and stated above, concern land use.

The issue of jurisdiction was well stated in the case of **Owners of Motor Vessel "Lillian S" -vs- Caltex Oil Kenya Ltd (1989) e KLR 1** where the court rendered itself that:

"Jurisdiction is everything. Without it, a court has no power to make one more step. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

It further held that jurisdiction flows from the law and a court can not arrogate itself jurisdiction through craft of interpretation.

9. This is the predicament that this court finds itself. It is its opinion that it is without jurisdiction. The honourable thing to do is to down tools, and transfer the case to the right court seized of the necessary jurisdiction, the Environment and Land Court.

I have stated in Paragraph 1 of this ruling that an order of interim injunction was granted by the High Court 1 on the 19th August 2015 (Hon. Justice M. Odero, J) pending the hearing and determination of the substantive application.

10. In the interest of Justice, the temporary orders of injunction are extended pending the hearing and determination of the application dated 17th August 2015 in the appropriate court.

The applicant may move the Environment and Land Court for directions on the hearing of the application under review and the suit in general.

Dated, signed and delivered in open court this 21st day of April 2016.

JANET MULWA

JUDGE