

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 159 OF 2015

DIG-TECH IMAGES LIMITEDAPPELLANT

VERSUS

KENYA RAILWAYS STAFF RETIREMENTS &

BENEFITS SCHEME1ST RESPONDENT

MBUKINYA SUCCESS (K) LIMITED.....2ND RESPONDENT

RULING

This appeal arises from the ruling and order of Honourable Mr Obulutsa, Senior Principal Magistrate delivered on 14th April 2015 in Chief Magistrate's Court at Milimani CC 86 of 2015 wherein the trial magistrate declined to grant a temporary injunction restraining the respondents herein from occupying, constructing or interfering with the occupation of plot LR 209/6502 Muthurwa estate pending hearing and determination of the suit.

In the court below, the appellant herein claimed that it had leased the above named plot from the 1st respondent Kenya Railways Staff Retirements & Benefits Scheme through a Temporary Occupation License (TOL) at an agreed monthly rent of kshs 80,000 payable quarterly in advance and that upon execution of the said temporary occupation license it paid shs 518,000 inclusive of VAT and deposit for 3 months rent but that it was not granted vacant possession by the 1st respondent and that later the 2nd respondent Mbukinya Success (K) Ltd invaded the said premises claiming ownership. It is upon the above brief facts that the respondent sought legal intervention to get quiet enjoyment and occupation of the demised premises and upon a prayer for injunction being declined by the trial court, they filed this appeal.

From the above concise facts, no doubt the dispute herein between the parties involves or relates to occupation of land LR No. 20916502 (PART) MUTHURWA ESTATE, NAIROBI. The appellant claims the right to occupy it having leased it from the 1st respondent whereas the 2nd respondent claims the land was leased to it and that it is in lawful occupation thereof.

A dispute relating to occupation, ownership or title to land can only be heard and determined by Environment and Land Court as contemplated in Article 162(2) (b) of the Constitution. Further, Article 165(5) (b) of the Constitution expressly bars the High Court from hearing and determining any dispute reserved for the courts contemplated in Article 162(2) of the Constitution.

In this case, occupation claimed is by way of a lease or rental agreement called temporary occupation license (TOL). The jurisdiction to hear any such claims as stated earlier is in the preserve of the Environment and Land Court as established under Section 4 of the Environment and Land Court Act, 2011, with jurisdiction conferred by Section 13(1) thereof.

Furthermore, claims falling under the Landlord and Tenants (Shops, Hotels and Catering Establishments Act (Cap 301) which would be heard by a Business Premises Rent Tribunal are

appealable to the Environment and Land Court. That being the case, I find that this court is devoid of jurisdiction to hear and determine this appeal, which power is vested in the Environment and Land Court. Accordingly, I hereby direct that this file be placed before the Environment and Land Court for further consideration as the court may deem fit and just.

Orders accordingly.

R.E.ABURILI

JUDGE

19/4/2016