



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL SUIT NUMBER 35 OF 2013

SANTABEN PREMCHAND SHAH

KIRANKUMAR GOVINDIAL SHAH

KIRIT GOVINDLAL SHAH.....PLAINTIFFS/APPLICANTS

VERSUS

MEYA AGRI TRADERS LIMITED.....DEFENDANT/RESPONDENT

RULING

1. The plaintiffs now the Applicants their Plaintiff filed on the 24th April 2013 sought Orders of eviction of the Defendant from its Business premises known as Elgon House standing on land **Parcel Nakuru Municipality Block 5/43** by virtue of a purported expired Lease entered into on 1st February 2008 and lapsed on the 28th February 2013. They also sought monthly Mense profits at the rate of KShs.500,000/= plus Value Added Tax(VAT) since March 2013 until eviction and General damages for trespass.

2. In its defence dated the 22nd May 2013, the Defendant/Respondent stated that this court had no jurisdiction to hear this case and by its **Preliminary Objection dated 22nd January 2015**, urged the court to strike out the entire suit on the following grounds:

1. That the suit offends the provisions of

(a) **Article 162(1) of and (2) (b) of the Constitution**

(b) **Environment and Land Court No. 19 of 2011**

(c) **Land Registration Act, No 3 of 2012**

(d) **Gazette Notice No 16268 of 9th November 2012** being practice Directions on proceedings relating to the environment and the use and occupation of, and title to, land issued by the Chief Justice.

3. On the **1st July 2013, the Plaintiff now the Applicants** filed a Notice of Motion under Section 3A of the Civil Procedure Act and Order 2 rule 15 and Order 36 rule 1 of the Civil Procedure Code seeking orders that the Defendant's defence dated 22nd May 2013 be struck out and an order for Summary Judgment against the defendant be issued.

4. The application came before me on the 18th May 2015 and parties argued the application. On record was the Preliminary Objection raised by the Defendant/Respondent on issue of jurisdiction, and dated 22nd January 2015.

This court has addressed itself on the Preliminary Objection as an issue of Jurisdiction was raised in the first instance, before it can determine the application dated the 1st July 2013.

As stated in Paragraph I of this ruling, the subject and cause of action herein is a dispute involving a Lease Agreement between the parties in respect of a property situated within Nakuru County, being

Nakuru Municipality Block 5/43.

5. The Environment and Land Court was established under Article **162(1) and (2) of the Constitution**. The **Environment and Land Act No. 19 of 2011** and commenced operations on the 30th August 2011. This case was filed on the 24th April 2013 – after the commencement of the Environment Land Court.

Section 13 of the said Act provides the functions of the Court:

Section 13(2)

“In exercise of its Jurisdiction under Article 16 2(2)(b) of the Constitution the Court shall have power to hear and determine disputes relating to environment and land, including disputes- (a) Relating to environmental planning and protection, trade, climate issues, land use planning title, tenure, boundaries, rates, rent-----

(d) Relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land----

Section 12 of the Act provides that all new cases (filed after the 30th August 2011) relating to land use and occupation shall be filed in the nearest Environment and Land Court for hearing and determination.

6. From the above, and together with provisions of the **Land Act No. 6 of 2012, Section 2** where definition of a Lease is given,

It is clear that this case falls under the jurisdiction of the Environment and Land Court.

As stated above, this case was filed on the 24th April 2013 after the establishment and commencement of the Environment and Land Court. It ought to have been filed in the said court.

7. In the circumstances, this court lacks jurisdiction to determine the landlord and tenant dispute in the suit as framed by the parties. It follows that the **plaintiff's application dated 1st July 2015 cannot be**

determined by this court.

This court will not strike out the suit as urged by the defendant. I direct that the suit be transferred to the proper court, the Environment and Land Court for hearing and disposal.

In view of this ruling, the court withdraws all the proceedings before it on the 23rd July 2015 in regard to the application dated 1st July 2013.

Dated, signed and delivered in open court this 23rd day of July 2015

JANET MULWA

JUDGE

In the presence of:

Ms. Mugweru - for plaintiffs
Gatonye - for the Defendant
Court clerk - Linah