



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ENVIRONMENT AND LAND COURT
MISC. APPLICATION NO. 8 OF 2014

KANTHILAL RAMJI BHUNDIA)

T/A NIKI WEAR).....
APPLICANT

VERSUS

JOSEPH WAITIKI NDEGWA)

BIASHARA SACCO
LIMITED).....RESPONDENTS

CONSOLIDATED WITH

MISC. APPLICATION NO.2 OF 2014

PRISCILLA WAMBUI
MATHENGE.....APPLICANT

VERSUS

JOSEPH WAITIKI
NDEGWA.....RESPONDENT

AND

MISC. APPLICATION NO.3 OF 2014

SAMUEL KAMENJU
.....APPLICANT

VERSUS

JOSEPH WAITIKI
NDEGWA.....RESPONDENT

R U L I N G

The applicants Priscilla Wambui Mathenge, Samuel Kamenju and Kanthilal Ramji Bhundia trading as

Niki wear Joseph Waitiki Ndegwa and Biashara Sacco Ltd have approached this court invoking the Civil Procedure Rules, landlord and tenant (shops, hotels and catering establishments) Act cap 301 Laws of Kenya and Article 165 2 (b) of the Constitution of Kenya 2010.

The **first** applicant **Priscilla Wambui Mathenge** seeks the court exercise of its unlimited original jurisdiction in civil matters to hear this matter and to restrain the landlord/respondent by himself, his agents, servants and/or anyone claiming under them by way of temporary injunction from disconnecting the applicant's electricity supply and water, evicting the applicant from the demised premises, demolishing the premises the subject of this reference namely NYERI MUNICIPALITY BLOCK 1/89. She also has sought an order that she be allowed to deposit the monthly rent to the tribunal. Her application is grounded the fact that that the Business Premises Rent Tribunal where this matter would ordinarily be heard is currently not sitting and as such the need that the matter be heard by this Honourable court. Upon serving the Notice to terminate the tenancy the Tenant/Applicant filed a reference Tribunal Case No.148 of 2013. In violation of the law governing the Landlord and Tenant the Landlord has disconnected the applicant's water supply while the interested party respondent has threatened to demolish the premises.

The second application is by Samuel Kamendu who seeks this court to exercise its unlimited original jurisdiction in civil matters in hearing this matter and prays that the landlord/respondent and the interested party/respondent Biashara Sacco Society Ltd by themselves, , their agents, servants and/or anyone from disconnecting the applicant's electricity supply and water, evicting the applicant from the premises, demolishing the premises the subject of this reference namely NYERI MUNICIPALITY BLOCK 1/89 and that he be allowed to deposit the monthly rent to the tribunal herein.

The **third** application is by **Kanthilal Ramji Bhundia T/A Niki** wear also seeking orders that his court should exercise its unlimited original jurisdiction in civil matter and do hear this matter and do order that the landlord/respondent and Biashara Sacco Ltd by themselves by himself, their agents, servants and/or anyone disconnection the applicant's electricity supply and water, evicting the applicant from the premises, demolishing the premises the subject of this reference namely NYERI MUNICIPALITY BLOCK 1/89 and that he be allowed to deposit the monthly rent to the tribunal herein. He also seeks an order that the 1st and 2nd respondents be ordered to remove the sand deposits from the entrance of the premises and that the Officer commanding Nyeri police station to provide security and enforce the order.

The respondents Joseph Waitiki Ndegwa and Biashara Sacco Ltd filed their replying affidavits and raised the issue of the jurisdiction of this court and therefore before going into the merit of the application, I am tasked to determine whether I have jurisdiction to entertain the dispute because if I find that I do not have the same, then I will down my tools.

Mr. Ng'ang'a summarized his preliminary objection to the courts jurisdiction by stating that in the gazette notice dated 3/2/2014 Silas Mbichi Mboroki was appointed the chairperson of Business Premises Rent Tribunal in the Notice dated 8/7/2013 and published on 3/2/2014. He argues that there is no evidence that there was an attempt to seek orders from the Tribunal. The application was brought after 3/2/2014 as it was filed on 13/2/2014. He further argues that the applicant should have filed petition for declaration that their rights have been violated and that there is no suit to be determined by this court.

Miss Nderitu supported Mr. Nganga and added that the court can only deal with appeals from Business Premises Rent Tribunal. That the applicants are seeking injunctive prayers as substantive orders as there is no suit pending in court.

Mr. Muhoho's response was that he was aware that the business tribunal had not convened by the time he filed the application and therefore the applicants had nowhere to go other than the High Court. He urged the court to take judicial notice that the Business Premises Rent Tribunal has not convened and further submitted that Cap 301 is relevant as section 6(1) provides that once you are served with the reference to the tribunal the notice to terminate or alter terms of tenancy ceases to take effect. He submitted that there is a reference already filed in court and urged the court to apply Article 159 of the Constitution of Kenya.

The **Judicature Act Cap 8** Laws of Kenya provides that the jurisdiction of the High Court, court of appeal and all subordinate courts shall be exercised in conformity with the constitution *inter alia*.

Article 162 (2) of the Constitution empowered the National Assembly 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. Moreover The National Assembly was empowered by the constitution to determine the jurisdiction and function of the courts contemplated in clause (2).

On the 27/8/2011 the president of Kenya *assented* to the **Environment and Land Court Act No.9 of 2011** whose commencement date was 30/8/2011. Section 13 of the Act clothes this court with 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 the Act or any other written law relating to environment and land. **Section 13 (2)** provides that in exercise of its jurisdiction under Article 162 (2) (b) of the Constitution ,the court shall have power to hear and determine disputes relating to environment and land .

I have considered the Constitution, Environment & Land Court Act and Cap 301 and do find that the Business Premises Rent Tribunal, is empowered to the determine disputes relating to landlord and tenants. The Landlord and Tenant (shops, hotels and catering establishments) Act was enacted to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected thereto and incidental thereto. The applicants have already filed a reference at the Business Premises Rent Tribunal unfortunately, the Tribunal is not sitting hence this application that urges this court to preserve the premises before the hearing of the reference. This court is not being asked to hear and determine the dispute but to restrain the respondents by temporary injunction from disconnecting electricity supply, water and from evicting the applicant from the premises.

The respondents were served with a reference and therefore should have obeyed the law by observing section 6(1) of Cap 301, however, it appears they have not complied and are attempting to evict the applicants.

Although Section 162 of the Constitution gives the High Court unlimited jurisdiction, it cannot be understood to mean that it can be used to clothe the High Court with jurisdiction to deal with matters which a statute has directed should be done by the Tribunal as part of its statutory duty; it is otherwise where the statute is silent on what is to be done In the event of absence of the Tribunal that this court can be called to exercise its unlimited original jurisdiction. It is trite law that where the court acts without jurisdiction, the proceedings are a nullity.

The extent of the jurisdiction of the High Court may not only, be that which is conferred or limited by the Constitution but also, that which any other law, may by express provisions or by necessary implication, so confer or limit.

The jurisdiction of the High Court can be ousted by an Act of parliament and in such cases all that the High Court can do is to enforce or quash by judicial review proceedings, the implementation of the provisions of the Act; certainly not, to usurp the powers of the tribunal. The judge should do not only what he is requested to do, but also to do what he had jurisdiction to embark upon.

Where the law provides for procedure to be followed, the parties are bound to follow the procedure provided by the law before the parties can resort to a court of law as the court would have no jurisdiction to entertain the dispute.

However nothing stops this court from hearing and determining application for redress of a denial or violation or infringement of or threat of fundamental freedom relating to the environment and land under articles 42, 69 and 70 of the Constitution.

This court takes reservation as to how the applicants herein approached it as they have not sought the court intervention properly by filing a suit or petition but seek to rely on the reference to demonstrate that their rights have been violated but on serious reading of the application, they have come to court

because they fear being evicted from their business premises and their electricity supply and water being is disconnected unlawfully. I have perused **Cap 301** and do find that section 12 of the Act does not make provision for **injunctiions** and **declarations** by the Business Premises Rent Tribunal and therefore this court will not be overstepping its jurisdiction in issuing the injunction sought to prevent the eviction of the applicants and disconnection of water and electricity supply until the dispute is determined by the Tribunal. The powers of the Tribunal as stipulated in Section 12(1) of the Act are very clear and this court cannot purport to exercise them. What is being sought by the applicants is within the jurisdiction of this court as provided for by Section 13 of Environment and Land Court Act No.19 of 2011.

The preliminary Objection raised by the respondents is hereby dismissed with costs.

Dated, signed and delivered at Nyeri this 24th day of February 2014

A. OMBWAYO

JUDGE