



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE 1349 OF 1998

SUPERIOR AVIATION SERVICES LTD..... PLAINTIFF
VERSUS
KENYA AIRPORTS AUTHORITY..... DEFENDANT

R U L I N G

1. The Defendant raised preliminary objection to the Plaintiff's suit by notice dated 30th April 2004. The legal points taken are-
 - (i) That the suit is misconceived and incompetent as it was filed "in contravention of the mandatory provisions of **sections 33(1) and 34 (a)** of the **Kenya Airports Authority Act, Cap 395**" (the Act).
 - (ii) That the suit is also misconceived and incompetent "as the summons to enter appearance served upon the Defendant are fatally and incurably defective as they contravene the mandatory provisions of **Order IV, rule 3(4)** of the (then) **Civil Procedure Rules**".
2. The preliminary objection was canvassed by way of written submissions, which I have read and considered, including the cases cited.
3. The Plaintiff's suit as pleaded in the plaint dated 19th June 1998 arose out of its constructive eviction from premises leased to it by the Defendant at **Wilson Airport Hunger NO 15** for alleged arrears of rent. It appears that the premises were leased out to the Plaintiff pursuant to the Defendant's statutory mandate under **section 12(1) (j) (ii)** of the Act -

"... to enter into agreements with any person, agency or Ministry -
for the performance or provision by that person, agency or Ministry of any of the services of facilities which may be performed or provided by the Authority."
4. **Section 33(1)** of the Act then provides as follows-

"33.(1) in exercise of the powers conferred by sections 12, 14, 15 and 16, the Authority shall do as little damage as possible; and, where any person suffers damage, no action or suit shall we, but he shall be entitled to such compensation as therefore as may be agreed between him and the Authority or, in default of agreement, as may be determined by a single arbitrator appointed by the Chief Justice."

5. And **section 34** of the **Act** provides-

“34. Where any action or other legal proceeding is commenced against the Authority for an act or any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act or any such duty or authority, the following provisions shall have effect-

(a) the action or legal proceeding shall not be commenced against the Authority until at least one month after the written notice containing the particulars of the claim, and of intention to commence the action or legal proceeding, has been served upon the managing director by the plaintiff or his agent;

(b) the action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of, or in the case of continuing injury or damage, within six months next after the cessation thereof.”

6. Provision of hangers for aircraft is one of the mandates of the Defendant, and entering into lease agreements in respect thereof is one of the powers conferred by section 12 aforesaid of the Act. That power must of necessity include the power to terminate such leases.

7. The Plaintiff’s complaint in this suit essentially is that in exercise of the Defendant’s powers under section 12 of the Act it has suffered damage for which it seeks the various remedies set out in its plaint.

8. By dint of section 33(1) of the Act set out above, the first point of call should have been negotiations between the Plaintiff and the Defendant for compensation. In default of agreement the Chief Justice would then be petitioned to appoint a single arbitrator who would determine the compensation to be paid.

9. And as the statute does not say that the decision of the single arbitrator shall be final, the parties could then have recourse to court if necessary.

10. In any event, no suit can be properly filed without first giving the one month notice required by section 34(a) of the Act. In the present case the suit was filed the day following the events that gave rise to the cause of action. So, there cannot be any dispute that the one-month notice was not given.

11. In the circumstances, and by the clear wording of the statute, the Plaintiff’s suit herein is premature and incompetent. It is hereby struck out with costs to the defendant. It is so ordered.

12. The delay in preparation of this ruling is deeply regretted. It was caused by my poor state of health the last few years. But thank God I have now regained my full health.

DATED AT NAIROBI THIS 10TH DAY OF SEPTEMBER 2012

H. P. G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 14TH DAY OF SEPTEMBER 2012