



REPUBLIC OF KENYA

High Court at Mombasa

Miscellaneous Civil Application 70 of 2012

BONIFACE MULI.....APPELLANT

VERSUS

HANNINGTON MUSYOKI .....RESPONDENT

KENYA POWER & LIGHTING ..... INTERESTED PARTY

RULING

1. This is a Preliminary Objection to the Applicant's notice of motion dated 31<sup>st</sup> August 2012. The motion seeks, essentially, the following two orders:

***"2. That the Honourable Court be pleased to assume its supervisory jurisdiction pending the sitting of the business Premises "Rent Tribunal in Mombasa and order the interested party to reconnect electricity supply to the applicant's business premises known as PARTY LINKS BAR & RESTAURANT pending hearing and determination of this application interparties***

***3. That the Honourable Court be pleased to assume its supervisory Jurisdiction and order the interested party to reconnect electricity supply to the applicant's business premises."***

2. The Applicant alleges that he is a tenant of the Respondent in respect of the premises housing a business known as Party Links Bar and Restaurant. Having allegedly received a notice of rent increase, he filed a reference in the Business Premises Rent Tribunal on 18<sup>th</sup> July, 2012. In the reference he seeks that the alleged landlord be restrained from increasing rent and complains that the power was disconnected from the suit premises. The BPRT issued orders on 17<sup>th</sup> August, 2012, but it is not clear exactly the content of the orders as they were not exhibited.

3. I should mention that the application herein enjoins the Kenya Power and Lighting company Limited as an interested party having disconnected power from the suit premises. The Applicant seeks reconnection.

4. The Preliminary Objection simply asserts:

***"That the application is bad in law and incurably defective as the Applicant lacks locus standi in the present suit."***

5. At the hearing of the Preliminary Objection, the Respondent argued that the Applicant was not the tenant as the Tenancy agreement was between Patricia Muli and Emekha Agencies, and that the tenant (Patricia) died on 23<sup>rd</sup> January, 2012. The Applicant objected to these arguments which relied on evidence. He cited **Mukisa Biscuit Manufacturing Company Ltd. vs WestEnd Distributors Ltd** [1969] EA 696 on the nature of preliminary objections. On this point, I concur with the Applicant, and disregard the Respondent's arguments based on, or relying upon evidence.

6. The Respondent's second argument on jurisdiction is what requires focus here. The Respondent argued that the High Court has no jurisdiction in a matter of this nature where the Business Premises Rent Tribunal is handling a reference under the Landlord and Tenants (Shops Hotels and Catering Establishments) (LTSHCE) Act Chapter 301. Controlled tenancies can only be dealt with in the High Court under Section 15 of the LTSHCE Act on an appeal against a determination of the Tribunal.

7. In their response, the Applicant argued that the motion was brought under the High Court's overall supervisory jurisdiction over subordinate courts pursuant to the provisions of Article 165(3) (a) and 6 of the Constitution, and Sections 3 and 3A of the Civil Procedure Act. Article 165 3(a) provides:

***"(3) Subject to Clause 5 the High Court shall have -***

***(a) Unlimited original jurisdiction in criminal and civil matters"***

And Article 165 (c) provides:

***"(6) The High Court has supervisory jurisdiction over the subordinate court and over any person, body or authority exercising a judicial or quasi judicial function, but not over a superior court."***

8. In my view, the supervisory jurisdiction of the High Court in respect of subordinate courts is that the High Court will observe, assess and ensure that the subordinate courts or tribunals are properly performing the functions for which they are established. Supervisory jurisdiction does not mean that the High Court will take over and supplant itself into a role that is to be played by a subordinate court or tribunal.

9. The Concise Oxford English Dictionary defines "**Supervise**" as follows:

***"Observe and direct the execution (of a task or activity)" or the work of (a person)"***

Under the LTSCHE Act Chapter 301, the form of supervision granted to the court is by way of an appeal against any determination or order of a tribunal made on a reference. It is clear from the documentation and arguments made that the reference made by the Applicant to the BPRT was subjected to a determination of some sort on 17<sup>th</sup> August, 2012 by the Tribunal. The order or determination of the Tribunal is not before this court. And this court cannot be used to go around or beyond the Tribunal via the High Court's constitutional supervisory jurisdiction.

10. As earlier stated, I hold that the High Court's supervisory jurisdiction encompasses the power of general superintendance over subordinate courts and tribunals. Through it superior courts keep subordinate courts and tribunals within their prescribed sphere and prevent usurpation. As such, the court agrees with counsel for the Respondent objector that the supervisory jurisdiction of the High Court refers to the court's power to oversee tribunals' actions for mistake, error or mis-procedure and the like.

11. Accordingly, I uphold the Preliminary Objection and dismiss the motion before the court as incompetent. The Applicant shall bear the costs herein.

Orders Accordingly.

**Dated and signed this 18<sup>th</sup> day of October, 2012**

**R.M. MWONGO**  
**JUDGE**

**Read in open court**

**Coram:**

Judge: **E. Muriithi on 22<sup>nd</sup>, October, 2012**

Court clerk: **R. Mwadime**

**In Presence of Parties/Representative as follows:**

- a).....
- b).....
- c).....
- d).....