



Njuca Consolidated Company Limited v Equity Bank (Kenya) Limited (Environment & Land Case E196 of 2023) [2024] KEELC 1696 (KLR) (5 April 2024) (Ruling)

Neutral citation: [2024] KEELC 1696 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E196 OF 2023
EK WABWOTO, J
APRIL 5, 2024**

BETWEEN

NJUCA CONSOLIDATED COMPANY LIMITED PLAINTIFF

AND

EQUITY BANK (KENYA) LIMITED DEFENDANT

RULING

1. This ruling is in respect to the Plaintiff/Applicant's Notice of Motion application dated 30th November 2023 wherein the Applicant sought injunctive orders barring disposal of the suit premises, prohibitory orders barring disposal via auction and costs of the application.
2. The Application was opposed vide the Defendant's Replying affidavit dated 18th December 2023, a Further Affidavit and written submissions dated 16th January 2024. The Defendant in its written submissions raised three main issues for consideration by this court; whether the court has jurisdiction to entertain the claim, whether the Plaintiff has locus standi in relation to third-party properties and whether he plaintiff has a prima facie case with probability of success.
3. Relying on the cases involving *Cooperative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] and *TSS Investments Limited & another v NIC Bank Limited* [2019] it was submitted that based on the predominant purpose test this Court does not have jurisdiction to handle the matter since it arises from business transactions of a commercial nature. It was further submitted that where jurisdiction is lacking, the court should strike out the suit.
4. On the other hand, the Plaintiff filed a supplementary affidavit dated 19th February 2024 in which it was argued that under Section 13(2) of the *Environment and Land Court Act* (ELC Act), the *Land Act* and *Land Registration Act* (LRA) the Courts jurisdiction covered all proprietary transactions. On the issue of locus, it was submitted that the loan amount was offered on security of properties owned by the Plaintiff and guaranteed by other companies i.e. Wakuga Holdings Limited, Cochem Services



Limited and Paric Hardware Products Limited. As such, it would be discriminatory for the matter to proceed without privity of all other companies involved.

5. I have considered the application, extensive bundle of supporting documents and rival submissions filed by the parties and the two main issues for determination herein are as follows;

- i. Whether this Court has jurisdiction to hear and determine the suit?
- ii. Whether the Notice of Motion application dated 30th November 2023 is merited?

6. It is now a well-founded principle that jurisdiction is a fundamentally crucial element of a suit. The Supreme Court in the case of *Samuel Kamau Macharia v Kenya Commercial Bank & 2 others*, Civil Appl. No 2 of 2011, observed that:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. ...Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

7. With regards to the Court of Appeal case of *Cooperative Bank (supra)*, my interpretation is that the High Court’s jurisdiction is triggered only where accounting issues have been raised and consequently require the Court’s determination in connection to the disposition of land.

8. In this instance, it is undisputed that the dispute stems from a Loan Agreement dated 31st August 2021 between the Parties. A perusal of the Plaint dated 30th November 2023 confirms that all orders sought primarily relate to breach of contract and accounting of monies paid. It further seeks protection of interests stemming out of the contract through damages and enforcement of statutory right of sale. Bearing this mind, I find that the issue of ownership is not a primary issue and for this reason, I find that the suit falls squarely within the jurisdiction of the High Court.

9. I have considered the sentiments in the case of *Pamoja Women Development Programme & 3 others v Jackson Kihumbu Wang’ombe & another* (Kiambu H.C. Civil Suit No 16 of 2016), Justice Prof. Ngugi (as he then was) faced a similar issue as follows:

“Kenyan’s desired specialized courts to deal with certain matters that they felt should be dealt with by these courts with special expertise and repeated experience in the questions they deal with. What Kenyan’s bargained for, and got in constitutionalizing the two Article 162(2) courts are the benefits associated with the creation of specialized courts in environment and law (as well as employment relations and labour): improved substantive decision making in the two areas fostered by having experts decide complex cases in the two areas and improving judicial efficiency through decreasing the judicial time it takes to process complex cases by having legal and subject-matter experts with repeated experience on the subject-matter adjudicate them. These were the advantages Kenyan’s bargained for in creating Article 162(2) Equal Status Courts. Kenyan’s objectives was not to set up judicial booby traps for unsuspecting litigants who after timeously filing and pleading their cases would have to undergo a technical game of jurisdictional Russian Roulette to determine if their case will survive or be struck out. While Kenyan’s did not wish to give litigants a blank cheque to file suits in the wrong fora in bad faith, they intended to give parties a fair chance to have their cases determined on their merits. This intention is defeated if, in close cases filed in a Court of cognate jurisdiction but where the parties subsequently or the Court makes a



determination that the particular Court in which the matter has been filed does not have the requisite jurisdiction and that the requisite jurisdiction lies in a cognate court, the Court responds by striking out the suit and requiring the parties to file a fresh the suit.” [Emphasis Mine]

10. Similarly, in the case of *Spinners & Spinners Limited v Spinners & Spinners Limited* [2017] eKLR, it was held as follows;

“In my view, this incidental concurrent jurisdiction includes the ability of both the High Court and the Equal Status Courts to deal with certain procedural or administrative questions that present quasi-judicial issues where the Court in question is requested to act in the interests of justice or due administration of justice. This is where I would locate the ability of any of the three superior courts of cognate jurisdiction to transfer to the counterpart superior court any case filed before it that would more appropriately be adjudicated in the cognate superior court..”

11. In view of the foregoing, I see no to reason depart from the aforementioned decisions and for the interest of justice, I hereby issue the following orders;

- a. This suit is hereby transferred to High Court (Commercial and Tax Division) and the Deputy Registrar of this Court is directed to facilitate the same.
- b. That pending further directions to be issued by the High Court (Commercial and Tax Division) the prevailing status quo shall be maintained in respect to the suit properties LR No’s 4953/1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844 1845, LR Nos. 4953/1828, 1829, 1830, 1831, 2832, 1833 and LR No’s 4953/2484-486, 2492, 2494, 2496, 2497, 2500, 2502, 2502, 2504, 2505, 2507, 2511, 2515, 2516, 2522, 2523, 2525, 2526, 2527, 2529, 2530, 253, 2532, 2533, 2536, 2539, 2542, 2544, 2547, 2550, 2551, 2552, 2555, 2556, 2558, 2560, 2563, 2564, 2566, 2569, 2570, 2573, 2580 and 2581.
- c. Costs to abide the determination of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF APRIL 2024.

E. K. WABWOTO

JUDGE

In the presence of: -

Ms. Maritim for the Plaintiff/Applicant.

Ms. Cheruiyot for the Defendant/Respondent.

Court Assistant; Caroline Nafuna.

