



REPUBLIC OF KENYA



KENYA LAW
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**Karani v Shunem Academy Limited & another (Environment & Land
Case 70B of 2021) [2024] KEELC 3842 (KLR) (7 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3842 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 70B OF 2021**

A OMBWAYO, J

MAY 7, 2024

BETWEEN

LAWRENCE KARANI PLAINTIFF

AND

SHUNEM ACADEMY LIMITED 1ST DEFENDANT

GRACE MUKAMI MWANIKI 2ND DEFENDANT

RULING

1. It is not disputed that the plaintiff seeks a declaration that he was unlawfully and or wrongly evicted from the suit premises by the defendant and therefore prays for general and exemplary damages for wrongful eviction. In alternative the plaintiff prays for one year rent and goodwill in lieu of notice.
2. The gravamen of the Plaintiff's case is that he entered into a lease agreement with the 1st Defendant, represented by the 2nd Defendant, through which he leased the school comprised in the building standing on parcels of land known as Dundori/Lanet Block 5/15 (Kiamunyeki "A") Dundori/Lanet Block 5/16 (Kiamunyeki "A") and Dundori/Lanet Block 5/17 (Kiamunyeki "A") (suit property). The plaintiff maintains that he duly complied with the lease agreement but was nonetheless unlawfully ejected from the suit property in or around February, 2019. In view of the unlawful eviction, the Plaintiff seeks the above reliefs among other pecuniary ones.
3. Through the Amended Defence and Counterclaim, the 1st Defendant challenges the validity of the lease agreement and claims that the Plaintiffs ingress into the suit property was illegal. At paragraph 26 of the Counterclaim, the 1st Defendant states verbatim, that the claims against the Plaintiff, general and special damages for trespass to and property. Amongst the reliefs it seeks are general damages for trespass.



4. The plaintiff submits that jurisdiction is conferred by the Constitution or by statute. It is trite that a Court cannot arrogate itself jurisdiction it does not have. He refers to Article 162(2)(b) of the Constitution of Kenya, 2010 which provides that Parliament shall 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. To the said end, the Environment and Land Court was established by Act NO 19 of 2011.
5. Section 13 thereof provides that the Court shall have 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 this Act or any other law applicable in Kenya relating to environment and land.
6. 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 public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land and any other dispute relating to environment and land
7. The entirety of the Plaintiffs case is anchored on his use and occupation of the parcels of land known as Dundori/Lanet Block 5/15 (Kiamunyeki "A"), Dundori/Lanet Block 5/16 (Kiamunyeki 'A') and Dundori/Lanet Block 5/17 (Kiamunyeki. The dispute herein relates to private and contract (lease) and is provided for at the said section 13(2) of the Environment and Land Act, 2011 not just contemplated thereunder.
8. The other reliefs sought by the Plaintiff are ancillary to his use and occupation of the said parcels of land and arise as a consequence, direct or indirect, of his unlawful eviction by the Defendants.
9. On his part, the 1st Defendant has alleged trespass on the part of the Plaintiff and has consequently sought damages for the alleged trespass. The plaintiff reiterates that a claim for trespass to land amounts to a dispute relating to the use and occupation of land.
10. This case relates to a grievance relating to alleged illegal entry onto and illegal use of the land which is trespass. In essence, this is a dispute relating to occupation and use of land and one which consequently falls within the broad jurisdiction donated to this Court under Article 62 (2) (b) of the Constitution. Article 162 of the Constitution
11. In light of the gravamen of the Plaintiff's suit, the reliefs sought by him and the reliefs sought by the 1st defendant in its Counterclaim, it is on this Court not only has jurisdiction but has exclusive jurisdiction to entertain this suit.
12. On the issue of costs, the plaintiff refers the Court to section 27 of the Civil Procedure Act, Cap. 21 Laws of Kenya. Essentially, the costs of the preliminary objection ought to follow the event and be awarded to the Plaintiff upon dismissal of the objection.
13. The defendant on his part submits that it is evident that the Plaintiff is seeking financial compensation. His case is not a land dispute regarding environment, ownership, use, occupation or boundary issues within the functions of the Environment and Land Court as was envisaged by Article 162 (2) (b) of the constitution.
14. That this whole case is premised on the question as to whether the Plaintiff is entitled to compensation for matters arising from an agreement signed between the Plaintiff and the 2nd Defendant. For the record, the 1st Defendant challenges the validity of that Agreement in so far as it purports to involve the 1st Defendant.



15. In view of the above the defendant argues that this suit is in the wrong court as this is intrinsically a commercial dispute within the province of commercial courts and that it would be very perilous for this Honorable Court to entertain this matter, because it would open floodgates and the proverbial Pandora's Box. If such a matter is deemed to be properly before this court, then all matters would be referred to this court just because the disputes are tenuously associated with land.
16. That if this court decides to hear this matter it will defeat the purpose of the establishment of the Environment and Land Court as the court would be treading into a purely commercial dispute. It is important that the court determines this matter early, as opposed to hearing the matter and including the issue of jurisdiction in its judgment. This is because if the court at judgment finds that it has no jurisdiction, parties will have already spent quite a considerable time litigating, and will be forced to go before another court to be heard afresh.
17. I have considered the preliminary objection and the rival submissions and do find that the suit revolves on breach of lease agreement and unlawful eviction from the suit premises hence on the use of land. The plaintiff has claimed that he has certain rights. Under the lease agreement which rights have been breached whereas the defendants defence denies the same. The suit properties are the parcels namely NDundori/Lanet Block 5/15 (Kiamunyeki "A")
18. NDundori/Lanet Block 5/16 (Kiamunyeki"A") and NDundori/Lanet Block 5/17.
19. The plaintiff contends that he has lawfully complied with the lease agreement but has been evicted whereas the defendants defence is that the plaintiffs entry in the suit property was illegal.
20. Counsel for the 1st defendant submitted that Article 162 of *the Constitution* as read with section 13 of the Environment and Land Court expounds on the jurisdiction of this Court as follows:
 - “(1) The Court shall have 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 this Act or any other law applicable in Kenya relating to environment and land.
 - (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.”
21. The broad jurisdiction of the ELC Court is donated by Article 162 (2) (b) which provides that Parliament shall establish a court 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. Counsel went on to submit that Parliament indeed enacted the *Environment and Land Court Act*, 2011. It is the plaintiff's case that this court has jurisdiction to entertain this matter by virtue of provisions of section 13(a) (d) and of the *Environment and Land Court Act*.



22. I do find that the plaintiff case is majorly based on use and occupation of the suit parcels of land by virtue of a lease agreement and therefore this court has jurisdiction to entertain the dispute as it revolves on use and occupation of land allegedly leased to the plaintiff. I dismiss the preliminary objection with costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 7TH DAY OF MAY 2024.

A. O. OMBWAYO

JUDGE

