



Ndirangu t/a Inter Vehicle Sales & 6 others v Muhu Holdings Company Limited (Environment and Land Appeal E085 of 2021) [2024] KEELC 4117 (KLR) (7 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4117 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E085 OF 2021**

MD MWANGI, J

MAY 7, 2024

BETWEEN

**ANTHONY NDIRANGU T/A INTER VEHICLE SALES 1ST APPELLANT
BONIFACE MWANGI KAHIGA 2ND APPELLANT
RICHARD KIMANI 3RD APPELLANT
ANNE NDEGWA 4TH APPELLANT
MARY MUTHONI 5TH APPELLANT
JUSTUS GITUMA MUGUN 6TH APPELLANT
WAMAE KANYIRI 7TH APPELLANT**

AND

MUHU HOLDINGS COMPANY LIMITED RESPONDENT

RULING

(In respect of the Respondent's Application dated 17th January, 2024 seeking to strike out the appeal)

Background

1. The application before me is by the Respondent, expressed to have been brought under the provisions Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Order 42 of the Civil Procedure Rules, 2010, Section 5 of the *Judicature Act*, Section 13 of the *Environment and Land Court Act*, and Article 40 of *the Constitution*. The Respondent prays for orders that;
 - a. The Appellants' Record of Appeal and Appeal be struck out as it is incompetent and an abuse of the Court process.



- b. The order granting the Appellants interim orders of stay of execution be vacated and the Respondent be allowed to execute and evict the Appellants from the Suit Premises.
 - c. Costs of this application be awarded to the Respondent.
2. The application is premised on the grounds that the Business Premises Rent Tribunal (BPRT) in BPRT Case No. 325, 326, 327, 328, 329, 330, 332, 333 of 2017, all consolidated as Case Number 325 of 2017 delivered the Judgement and issued an order dated 13th March, 2020, dismissing the Tenant's References and allowing the Landlord's notice dated 20th February, 2017. The BPRT further ordered the Tenants shall vacate and handover vacant possession of the suit premises on/or before 1st July, 2020, in default, an eviction order shall issue with reference to the Tribunal.
 3. The Respondent averred that the Appellants subsequently filed an Appeal against the decision of the Tribunal before this court being ELCA No. 16 of 2020. The said appeal was however dismissed by the Justice B.M. Eboso on 2nd February, 2021. The decision of the Honourable Tribunal delivered on 13th March, 2020 therefore still stands.
 4. Consequently, the Respondent filed for eviction orders in the BPRT, which orders were granted. The Appellants once again moved to this court where they were granted restraining orders barring the Respondent from evicting them from the suit premises pending the determination of this Appeal.
 5. The Respondent submits that by dint of Section 15 of Cap. 301, the High Court (read Environment and Land Court) is the final court for purposes of an appeal. Therefore, the decision of the Honourable Justice B.M. Eboso delivered on 2nd February, 2021, was final. The matter cannot therefore be the subject of a further appeal.

Replying Affidavit

6. The Appellants opposed the application vide the Replying Affidavit sworn on their behalf by one, Justus Gituma Muguna, the 6th Appellant herein on the 22nd February, 2024. The Appellants assert that the Respondent's impugned Termination Notices did not subject the Appellants' Business Premises situated on LR No. 209/681/2 to litigation before the BPRT and subsequently before this Court in Appeal No.16 of 2020.
7. The deponent states that the Honourable Court in the Appeal correctly found in its Ruling delivered on the 26th July, 2021 in ELC Appeal No.16 of 2020 at Page 9 Paragraph 15 thereof that, "... Identification of the Business Premises in respect of which the Appeal before this Court arose was not one of the issues this Court was invited by the Appellant to determine.... Consequently, the Court never rendered a determination on the issue of identification of the Business Premises. It cannot therefore be said that there was a mistake or an error in the part of this Court relating to identification of the Business Premises".
8. They therefore argue that the Respondent is precluded under Section 120 of the *Evidence Act* from asserting that this Appeal, which revolves around identification of the Appellants' business premises is res-judicata when the Learned Judge Eboso was categorical that the court never rendered a determination on the issue of identification of the Appellants' said business premises. The Application is therefore misconceived, incompetent and ought to be dismissed with costs as it amounts to an abuse of the process of the court.
9. On a without prejudice basis, the deponent avers that since the Respondent's impugned Termination Notices herein did not revolve around the Appellants' Business Premises situated on LR No.



209/681/2, the Respondent’s application is misconceived and ought to be dismissed with costs for abusing the process of the Court.

Court’s Directions

10. The court directed that the application be dispensed with by way of written submissions. The Parties complied. The Respondent’s submissions are dated 4th April, 2024 whereas the Appellants’ submissions are dated 12th April, 2024. The court has had occasion to read and consider the submissions which now form part of its record.

Issues for determination

11. Having considered the affidavit evidence from both sides, the annexures thereto, the submissions by counsel and the applicable law, two issues arise for consideration:
- a. Whether this Honourable Court has jurisdiction to hear and determine this Appeal;
 - b. Whether the orders sought by the Respondent should be granted.

Analysis and Determination

A. Whether this Honourable Court has jurisdiction to hear and determine this Appeal

12. Jurisdiction is everything. The Court in the celebrated case of *Motor vessel M.V. Lillian’s v Caltex Oil (Kenya) Limited* [1989] KLR 1, stated that,

“Jurisdiction must be acquired before judgment. It is for this reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on evidence before the court. It is immaterial whether the evidence is scanty or limited...the moment the court determines that it has no jurisdiction it has to down its tools and proceed no further.”

13. On the same breath, the Supreme Court stated in the Matter of Interim Independent Electoral Commission [2011] eKLR as follows:

“Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel ‘Lillian S’ v Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.”

The Lillian ‘S’ case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.”



14. The Environment and Land Court only is the appellate court under Section 15 of the [Landlord and Tenant \(Shops, Hotels and Catering establishments\) Act](#), Cap 301 Laws of Kenya of the Act. The Court's mandate under the said section is to hear appeals from decisions of the tribunal. Hence the Environment and Land Court is purely an appellate court in matters dealing with controlled tenancies.
15. Section 15 of the said [Act](#) provides that:
- “ 15 Any party to a reference aggrieved by any determination or order of a Tribunal
- (1) made therein may, within thirty days' after the date of such determination or order, appeal to the High Court: Provided that the High Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.
- (2) In hearing appeals under subsection (1) of this section the Court shall have all the powers conferred on a Tribunal by or under this Act, in addition to any other powers conferred on it by or under any written law.
- (3) Deleted by Act No. 2 of 1970, s. 13.
- (4) The procedure in and relating to appeals in civil matters from subordinate Courts to the High Court shall govern appeals under this Act Provided that the decision of the High Court on any appeal under this Act shall be final and shall not be subject to further appeal.”
16. The Respondent herein issued termination notices to the Tenants (Appellants) which culminated in the 8 References before the BPRT. The ground for termination was that the Respondent (Landlord) intended to carry out substantial works of construction and renovation which could not be carried out without obtaining vacant possession of the said premises. Upon inspecting the premises and conducting a trial, the Tribunal rendered its judgement on 13th March, 2020, dismissing the references and allowing the Landlord's (the Respondent herein) notices. The Tenants were directed to vacate the premises and hand over vacant possession of the premises by 1st July, 2020 and in default, an order of eviction was to issue with reference to the tribunal.
17. The Tenants being aggrieved by the Tribunal's Judgement filed an appeal before this Court being ELC Appeal No.16 of 2020. The Appeal was heard and determined by the Learned Justice B.M. Eboso who dismissed it vide his Judgement delivered on the 2nd February, 2021.
18. The Respondent/Landlord then moved the Tribunal vide the application dated 12th March, 2021 seeking for eviction orders against the Appellants with the assistance and supervision of the OCS Kamukunji. The Appellants on the other hand filed the application dated 21st July, 2021 seeking a review of the Judgement by the Tribunal delivered on the 13th March, 2020. The Honourable Tribunal in its Ruling delivered on the 5th November, 2021 dismissed the Appellants/Tenants' application and allowed the Respondent/Landlord's application. It is the Ruling of 5th November, 2021 that forms the basis of this Appeal.
19. I have perused the Memorandum of Appeal filed herein, the Appellants contend that the Termination Notices never identified the specific Business Premises. Evidently the Appellants are still challenging the purported error in the Notices issued to them by the Landlord in the instant Appeal.
20. The Learned Judge B.M. Eboso while determining the Appellants' previous appeal in ELC Appeal No.16 of 2020 in his Judgement of 2nd February, 2021, noted at paragraph 21 that; “... the Appellants had the opportunity to apply to have the notices struck out; they challenged the notices through a



preliminary objection; they subsequently withdrew the preliminary objection and they allowed the hearing to proceed.....”

21. Further, in the Judgement of the Tribunal dated 13th March, 2020, the Chairman noted at Paragraphs 11 and 12 that the Landlord’s notices were valid before the Tribunal and that upon conducting a site visit, the Business premises is located at Mfangano Street and that the 1st, 2nd and 3rd floors were in deplorable condition requiring renovations. There was no doubt about the identity of the business premises the subject matter of the Reference before the BPRT and subsequently the appeal before this court.
22. It is evident that the Appellant already exercised the right of appeal conferred by section 15(1) aforesaid before this court. The Court made a decision thereon. The court already pronounced itself on the issue of the notices. The proviso to section 15(4) of the Act is framed with finality.
23. In the case of Kantilal Virpal Shah t/a Behnls Education Supplies -vs- Benja Properties Limited [1998] eKLR, the court while dealing with a similar application, which decision I agree with, stated that:

“The proviso to section 15(4) of the Act is stated in such finality that even a liberal construction would be misplaced. I consider it important to emphasize some of the words in that proviso. The decision of the High Court on “any appeal” under this act “shall be final” and “shall not” be subject to “further” appeal.”
24. Therefore, the decision of this court made in ELC Appeal No.16 of 2020 on 2nd February, 2021 was final. No further appeal lies. The Appellants are just wasting the precious judicial time (both at the Tribunal and this Court) in litigating over the same issue of notices. I would therefore agree with the Respondent that this court has no jurisdiction to entertain the present appeal.
25. Accordingly, the court finds that it lacks the jurisdiction to hear this Appeal.
26. Having found that the Judgement issued by this court in ELC Appeal No.16 of 2020 on 2nd February, 2021 was final and that this Court lacks the jurisdiction to vary it, it therefore follows that the instant appeal has no basis.
27. In conclusion therefore, the Respondent’s application herein is allowed as prayed in the following terms:
 - a. The Appeal herein is struck out in totality.
 - b. The interim orders of stay of execution are consequently vacated.
 - c. The Respondent is at liberty to execute the orders issued on 13th March, 2020 and 5th November, 2021 by the Tribunal.
 - d. The Respondent shall have the costs of this application and the appeal.

It is so ordered

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

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ngoge for the Appellants



Ms. Anyango Opiyo for the Respondent

Yvette: Court Assistant:

M.D. MWANGI

JUDGE

