



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT KAJIADO**

**ELC CASE NO. 071 OF 2020**

**HAROLD WAFULA.....PLAINTIFF**

**-VS-**

**ALLAN RAGI.....1<sup>ST</sup> DEFENDANT**

**MARY MUENI.....2<sup>ND</sup> DEFENDANT**

**RULING**

This ruling is on the preliminary objection dated 11<sup>th</sup> August, 2020.

The said objection is to the effect that this suit is an abuse of the court process as there exists a similar suit at the ***Rent Restriction Tribunal, Nairobi CMC No. 387 of 2020 (Harold Wafula –vs- Allan Ragi)*** which is still pending for hearing and determination.

I have considered the entire record comprising of the plaint, affidavits, annexures and submissions by both sides.

I find that this suit is not properly before this court for the following reasons;

Firstly, the jurisdiction of this court in ***Article 162 (2) (b) of the constitution*** and ***Section 13 (2) of the Environment and Land Court Act (Act No. 19 of 2011)***, does not include disputes between tenants and landlords.

Such disputes fall squarely within the jurisdiction of the Rent Restriction Tribunal. It is trite law that where a court lacks jurisdiction, it downs its tools. This has the holding in the case of ***Mukhisa Biscuits Manufacturers Ltd –vs- West End Distributers Ltd (1969) E.A. 696***.

Secondly, the plaint dated 19/6/2020 is defective for failure to comply with mandatory provisions of Law ***namely Order Rules 1 (1) (f) and 2 of the Civil Procedure Rules*** which provide as follows;

***1 (1) The plaint shall contain the following particulars***

***(f) An averment that there is no other pending suit, and that there have been no previous proceedings in any court between the plaintiff and the defendant over the same subject matter and that the cause of action relates to the plaintiff named in the plaint.***

***(2) The plaint shall be accompanied by an affidavit sworn by the plaintiff, verifying the correctness of the averments contained in Rule 1(1) (f) above.***

The plaint lacks these two basic requirements.

One may ask whether the plaintiff may be given a chance to salvage his case so that it does not seem as if the Court is pre-occupied with technicalities.

The answer to that would be that the Court is already aware of the existence of Rent Restriction Case No. 387 of 2020 between the same parties in this case over the same subject matter.

Be that as it may, the absence of jurisdiction as stated above leaves no other option but to strike out the entire suit with costs to the defendant.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 2<sup>ND</sup> DAY OF NOVEMBER, 2021.**

M.N. GICHERU

JUDGE