



REPUBLIC OF KENYA



KENYA LAW
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**Genton AG v Beloilco Holdings Limited (Civil Suit 146 of 2015)
[2025] KEHC 12128 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12128 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT 146 OF 2015**

F WANGARI, J

MAY 22, 2025

BETWEEN

GENTON AG PLAINTIFF

AND

BELOILCO HOLDINGS LIMITED DEFENDANT

RULING

1. This suit was instituted via a Complaint dated 16/10/2015. The Complaint was subsequently amended via the Further Amended Complaint dated 02/07/2019. The Plaintiff sought for relief against the Defendant for General Damages, Special Damages for Kshs. 514,560,720.80=, and indemnity for a claim lodged by the Kenya Revenue Authority being unpaid taxes for Kshs. 256,445,894=.
2. The basis of the claim was that the Plaintiff and the Defendant had entered into a lease agreement where the Defendant leased its land and buildings to the Plaintiff for a period of 5 years from 09/06/2011. The lease was for a fully licensed resort and the Plaintiff avers to have commenced renovations, refurbishments, recruiting of staff and marketing and generally improving the standards of the premises to internationally acclaimed standards.
3. Despite full payment of the rent reserved in the lease period amounting to EURO 200,000=, the Defendant reneged and breached the lease agreement, hence the basis and the purpose for which the premises were leased was defeated and became unrealizable.
4. It is based on the above that several applications have been filed in the matter. The application subject to this ruling is the Notice of Motion dated 30/10/2022 seeking injunctive orders against the Defendant and its agents from dealing with property known as L.R No. 13053 comprised in Title No. C.R 14391 pending hearing and determination of this application and suit.



5. The Defendant filed a Notice of Preliminary Objection dated 01042019 and 07122022. From the court proceedings, the counsel for the Defendant stated that since the P. Os are similar, he would proceed to argue the P.O dated 07122022. The P.O dated 07122022 is based on the following grounds;
 - a. This court has no jurisdiction to hear and determine any dispute relating to the use and occupation of and title to land, such jurisdiction being vested in the Environment and Land Court as established by the *Environment and Land Court Act* pursuant to Article 162 (2) (b) of the *Constitution* of Kenya.
 - b. The High Court is expressly prohibited by Article 165 (5)(b) of the *Constitution* of Kenya from having jurisdiction in respect of matters falling within the jurisdiction of the Environment and Land Court.
6. The hearing of the application and the P.O proceeded orally in court. On 28092023, the parties were directed to file their written submissions in addition to the oral submissions. I note that the Respondent had filed its submissions on the P.O o jurisdiction of this court. The submissions are dated 07122022. The Plaintiff had earlier filed submission dated 06122019 in respect to the P.O dated 01042019. Submissions on the P.O dated 07122022 were made orally in court.
7. On 23022024, the parties were informed that the pleadings were missing both in the court file and on the e-filing platform and directed to ensure that the pleadings are filed. Both parties filed their physical trial bundles. However, as at the time of writing this ruling, there is no pleading or document filed in the e-filing platform.
8. On 02042024, Miss Muyaa Advocate or the Defendant stated that they had filed all their pleadings in the e-filing platform. As at the time of writing this ruling, no the documents were not reflecting in the e-filing platform The parties to follow up with the registry so as track the files in the Case Tracking System.
9. Having perused through the pleadings and the filed submissions, the issues for determination are;
 - a. Whether the Preliminary Objection is merited
 - b. Whether the Notice of Motion dated 30102022 is merited
 - c. Who bears the costs
10. Before dwelling on the issue of the Preliminary Objection, I will deal with the application dated 30102022 first. As stated herein above, the application seeks injunctive orders in respect to the suit property. It has been submitted, a fact which is acknowledged by the Plaintiff that the said suit property had already been sold to a 3rd party and already subdivided. The said application has been overtaken by events and making a finding on the same would just be an academic exercise.
11. On the Preliminary Objection, the Defendant states that this court has got no jurisdiction to hear and determine the suit as it involves use and occupation of land which is under the jurisdiction of the Environment and Land Court. It was prayed that the suit be struck out.
12. The parameters of consideration of a Preliminary Objection are now well settled. A Preliminary Objection must only raise issues of law. The principles that the Court is enjoined to apply in determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal



in the case of *Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd* [1969] EA 696. At page 700, Law, JA stated: -

“A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the Court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

13. For a Preliminary Objection to succeed the following tests ought to be satisfied;
 - a. it should raise a pure point of law;
 - b. it is argued on the assumption that all the facts pleaded by the other side are correct; and
 - c. it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.

14. A valid Preliminary Objection should, if successful, dispose of the suit or application. The issue of jurisdiction is a point of law. In the case of “*Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR where Justice Nyarangi, JA, as then he was held as follows: -

“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. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

15. I note that the issue of jurisdiction was first raised in the Statement of Defence dated 10062019, then 2022. The issue of jurisdiction being very fundamental can be raised any time including on appeal.



In the case of *Kenya Ports Authority vs Modern Holding [EA] Limited* [2017] eKLR it was held as follows:-

“We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised at any time, in any manner, even for the first time on appeal, or even viva voce and indeed, even by the court itself provided that where the court raises it suo moto parties are to be accorded the opportunity to be heard”

16. The matter having been filed in year 2015 and proceeded before 4 other High Court judges, nothing stops this court from dealing with the issue of jurisdiction as raised by the Defendant.
17. It is not in dispute that the crux of the dispute is the lease agreement for the suit property. The issue is whether it is the High Court or the Environment and land court that has jurisdiction to deal with the matter.
18. the *Constitution* of Kenya under Article 162 (2) (b) establishes the Environment and Land Court. It provides as follows;

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- (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
 - (b) the environment and the use and occupation of, and title to, land.

19. The jurisdiction of the court is mentioned under section 13 of the *Environment and Land Court Act*, No. 19 of 2011 which provides as follows;

Jurisdiction of the Court

- (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.



20. I disagree with the Plaintiff that this court has jurisdiction to deal with the issues raised in the suit. The counsel submitted that the claim against the Respondent is commercial in nature as it involved payment of rent. The Plaintiff also claiming damages for the repair of the boat makes the nature of the matter commercial. However, on the substratum of the suit, I do agree with the submissions by the counsel for the Defendant that the principal claim is in respect to the use and occupation of land.
21. As for whether the suit is res judicata, this court having found that it has no jurisdiction in the matter, downs it tools and cannot make any determination on the issue.
22. The matter having been pending in the court for 10 years, and there being no indication that the suit was maliciously filed, I find no reason to award costs to the Defendant. Each party to bear its own costs.
23. Having found as above, the following orders flow therefrom: -
 - a. The Preliminary objection dated 07122022 has merits and is hereby upheld.
 - b. The suit is hereby struck out
 - c. No orders as to costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 22ND DAY OF May, 2025.

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F. WANGARI

JUDGE

In the presence of:

NA by the Plaintiff

NA by the Defendant

MS Norah, Court Assistant

NB: Typed judgment released to the registry. Parties be notified.

