Roadtainers (Mombasa) Limited v Tea Warehouse Limited (Civil Suit 024 of 2023) [2025] KEHC 12131 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEHC 12131 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CIVIL SUIT 024 OF 2023

F WANGARI, J

MAY 22, 2025

BETWEEN

ROADTAINERS (MOMBASA) LIMITED ..... PLAINTIFF

AND

TEA WAREHOUSE LIMITED ..... DEFENDANT

RULING

1. This suit was instituted via a Plaint dated 16/03/2023. The Plaintiff sought for relief against the Defendant for loss of future rent, outstanding rent, interest on unpaid rent and expenses incurred in restructuring and modifying the suit premises and any other relief the court may deem fit to grant.

2. The basis of the claim was that the Plaintiff and the Defendant had entered into a lease agreement where the Plaintiff sub-leased its 5 Godown Warehouses known as G1, G2, G3, G4 and G5 situate on Plot No. 2390 Section V/MN Jomvu Kuu Mombasa, herein referred to as the suit premises.

3. The lease was for a period of five (5) years and three (3) months commencing from 01/07/2016 where rent was payable in quarterly basis. The Defendant unilaterally and prematurely terminated the sub-lease by vacating the suit premises on 31/03/2017 before the expiry of the term hence leading to the filing of this suit.

4. The Defendants entered appearance and filed the Statement of Defence dated 19/04/2023. The Defendant denied the contents of the Plaint and put the Plaintiff to strict proof thereof.

5. The firm of Advocates representing the Defendant filed an application dated 19/04/2024 seeking leave to cease from acting. The application was allowed on 28/05/2024. The matter was fixed for Case Management Conference on 17/09/2024 and matter fixed for hearing on 28/11/2024. The matter did not proceed for hearing as scheduled and the matter adjourned to 26/02/2025.

6. On the hearing date, the Defendant did not attend court despite service of the hearing notice. The hearing proceeded ex-parte and the Plaintiff closed its case. The matter was then fixed for judgment.

7. Having perused through the pleadings and the oral evidence adduced by the Plaintiff's witness, the issues for determination are;

   a. Whether this court has the jurisdiction to hear and determine the matter

   b. If the answer to the above is positive, whether the suit has merits.

   c. Who bears the costs

8. On the first issue, the suit is premised on a lease agreement. The issue is whether it is the High Court or the Environment and land court that has jurisdiction to deal with the matter. I do appreciate the fact that this matter proceeded for hearing now pending judgment. However, it has been held that jurisdiction can be raised at any time even that of the appeal.

9. 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"

10. The issue of jurisdiction has been raised by this court suo moto. The parties have not been accorded the opportunity to be heard. It is on this basis that the court direct as hereunder;

    a. The parties do make further submissions on the issue of jurisdiction.

    b. Final judgment/ orders to be issued thereafter.

    Orders accordingly.

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

.....

F. WANGARI

JUDGE

In the presence of:

M/S Machogu Advocate for the Plaintiff

N/A by the Defendant

M/S Norah, Court Assistant