



**Maina t/a Blescohouse Premier Academy v Kenya Railways Corporation  
(Civil Suit 4 of 2022) [2024] KEHC 1138 (KLR) (9 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1138 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL SUIT 4 OF 2022  
SM MOHOCHI, J  
FEBRUARY 9, 2024**

**BETWEEN**

**CATHERINE WAIRIMU MAINA T/A BLESCHHOUSE PREMIER  
ACADEMY ..... PLAINTIFF**

**AND**

**KENYA RAILWAYS CORPORATION ..... DEFENDANT**

**RULING**

1. The Plaintiff filed her Complaint on the 9th February 2022, contending that at all material times, they were the Defendant's Lessee on a two (2) acre Railway reserve land in Mbaruk Railway Station in Nakuru County.
2. The Defendant's statement of defence filed on the 15<sup>th</sup> March 2022 substantially admits the relationship between them but raises objection on lack of jurisdiction to entertain this suit by this Court and subsequently a notice of preliminary objection was filed on the same issue of lack of jurisdiction.
3. In its statement of defence filed on the 8<sup>th</sup> September 2016, the Defendant admits existence of the Lease agreement of the suit premises but denied any breach of the lease agreement and the sum claimed.
4. It is deposed that the dispute for the Court's determination in the suit is a claim arising from a breach of the lease as the Defendant demolished the Plaintiff's structures erected thereupon, before lapse of the term lease, thus seeking compensation for loss and damages and that, by its nature is a commercial dispute and not a land dispute as envisaged under the *Environment and Land Act*.
5. Having considered the pleadings and written submissions in support of the preliminary objection and in opposition to and authorities cited I have refined a sole issue for consideration;  
Whether this Court (High Court) has jurisdiction to hear and determine the suit?



6. In its written submissions, the Defendant vehemently supports its assertion that the subject of the suit is a dispute on the use of land and the plaintiff has used the two words “Land and Premises” and citing the Kenya Constitution 2010, Article 260 defines “land” to include:
  - (a) the surface of the earth and the subsurface rock
  - (b) anybody on water or under the surface
  - (c) marine waters in the territorial sea and exclusive economic
  - (d) natural resources completely contained on or under the surface and
  - (e) The airspace above the surface.
7. This definition of land is replicated under the Land Act, 2012 which states “land” has meaning assigned to it under Article 260 of the Constitution.

“Lease” under the Land Act 2012 is given the meaning as:

  - (a) a lease or sublease, whether registered or unregistered of land or
  - (b) a short-term lease or agreement to lease.”
8. The application of The Land Act 2012 is given in Section 3 that is:
  - (a) registration of interests in all public land as declared by Article 62 of the Constitution
  - (b) Registration of interests in all private and as declared by Article 64 of the Constitution.
9. Further Section 36(1) of the Said Act states that:

“(1) a Lease charge or interest in land shall not be disposed off or dealt with except in accordance with this Act, and any attempt to dispose of any lease, charge or interest in land otherwise than in accordance with this Act or any other law, shall not extinguish transfer vary or affect any right or interest in that land or in the land lease or charge.”
10. Against the backdrop of the above legal provisions, it is important to determine the basis of a Court's jurisdiction.
11. In the Supreme Court decision in Samuel Kamau Macharia & Another v KCB & 2 Others application No. 2 of 2011 the Court held that:

“a Court's jurisdiction flows from either the Constitution or Legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or both or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
12. The Jurisdiction of the High Court is provided for in Article 165(3) of the Constitution that, subject to Clause 5 the High Court shall have:
  - (a) Unlimited original jurisdiction in criminal and civil matters.



Section 65(5) States that:

The High Court shall not have jurisdiction in respect of matters

(b) Falling within the jurisdiction of the Courts contemplated in Article 162(2).”

13. The Court's contemplated under the said Article 162(2) are (a) the Employment and Labour Relations (b) the Environment and Land Court with regards to the use and occupation of, and title to land.

14. The [Environment and Land Court Act](#) Chapter 12A was established to hear and determine the following matters:

Section 13 (2) (d) relating to public land, private and community land and contracts, choses in action or other instruments granting any enforceable interest in land.

15. We recall the case [Karisa Chengo & 2 other v Republic](#) Court of Appeal at Malindi Criminal Appeal Nos. 44, 45 and 76 of 2014, the Court rendered itself, on the issue of jurisdiction of the High Court, that:

“.....It is therefore clear that the High Court no longer has original and unlimited jurisdiction in all matters as it used to have under the repealed constitution.

It cannot deal with matters set out under Section 12 of the [ELRC Act](#) and Section 13 of the [ELC Act](#) ---”

16. It is therefore obvious that the High Court cannot deal with matters specifically preserved for the Environment and Land Court.

17. With regards to the invitation to strike out the pleadings? I associate myself to the sentiments of H. I. Ogudi J. in Gladys Jepkosgei Boss v Star Publication Limited [2021] eKLR citing the case of [Blue Sky Epz limited v Natalia Polyakova & Another](#) [2007] eKLR the Court held that:

“The power to strike out pleadings is draconian, and the Court will exercise it only in clear cases where, upon looking at the pleading concerned, there is no reasonable cause of action or defence disclosed. In the case of a defence, a mere denial or a general traverse will not amount to a defence. A defence must raise a triable issue.”

18. This Court has a general power under Section 18 of the [Civil Procedure Act](#) to transfer a suit from itself to another Court or from another Court to itself.

19. The Court also has its inherent jurisdiction under Section 3A, and the Oxygen principles, coupled with Article 159(2) of the [Constitution](#) to dispense Justice without undue regard to procedural technicalities, but not undermining clear legal provisions of the law.

20. Therefore, the High Court has no jurisdiction to hear and determine any suit touching on the occupation, use and title to land. It is this Court's finding that, the plaintiff's suit, being based on a Lease/ offer to lease, between the Plaintiff and Defendant is a suit that falls squarely for determination in the Environment and Land Court.

21. In upholding the principles of fair administrative action and upon Courts unlimited jurisdiction, I find it imprudent to strike out the plaint filed in this Court but to order a transfer of the suit to the relevant Court with jurisdiction, the Environment and Land Court, which I hereby do.

22. The Plaintiff underpins the substratum of his dispute on the lease for occupation and use of land and thus ought to have known the proper forum to file her action and is thus free from reproach.



23. I therefore direct that, the Plaintiff shall pay throw-away costs to the Defendant assessed at Kshs 50,000/=.
24. The throw-away costs should be paid to the Defendant within thirty (30) days of this ruling, failing which, the Defendant's Notice of Preliminary Objection dated 20th June 2022 which is merited, but for the ends of Justice and in exercise of this Court's inherent jurisdiction I have declined to grant the prayers sought for the reasons stated in the body of this ruling,
25. A default to comply in complying and making payment of the throw-away costs by the Plaintiff, shall automatically lead to the Preliminary objection being allowed and the prayers sought then, shall be deemed to have been granted with costs.

It is so Ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 9TH DAY OF FEBRUARY, 2023.**

.....

**S. MOHOCHI**

**JUDGE**

