



**Sehmi & another v Mohinder (Civil Appeal E503 of 2023)
[2024] KEHC 1423 (KLR) (Civ) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1423 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E503 OF 2023

JN MULWA, J

FEBRUARY 15, 2024

BETWEEN

BYANT SINGH SEHMI 1ST APPELLANT

JESSE MBURU GITAU T/A GALLANT WORLDWIDE 2ND APPELLANT

AND

RAJUINDER KAUR MOHINDER RESPONDENT

RULING

1. This ruling is in respect of the Respondent's Preliminary Objection dated 4/10/2023. The objection touches on this Court's (High Court) jurisdiction to hear and determine this suit. The Respondents case is that the ruling giving rise to this Appeal is founded on a suit whose subject matter is in respect of a dispute over ownership/title/property/land known as Land Reference No.37/261/6 situated along Geta close off Kodi Road in Nairobi West and the 1st Appellant's claim for rent arrears amounting to Kshs. 6,480,000/= in which the 2nd Appellant as the auctioneer was instructed by the 1st Appellant to levy distress.
2. In their Replying Affidavit sworn on 19th October 2023 the Appellants oppose the Application and argue that the Ruling that gave rise to the Appeal before this Court is founded on a suit in which the Respondent was seeking permanent injunctive orders as well as a stay of execution of the intended sale of the Respondents goods/property and not ownership of the property known as land reference No.37/261/6 or rent arrears thereto.
3. The Appellants argue that the Respondent has failed to come to court with clean hands as she has failed to inform the court of the existence of an Environment and Land Court Case in Nairobi Being ELC No.677 of 2016 *Rajuinder Kaur Singh (suing as the Executrix of the Estate of Mohinder Singh (Deceased) vs. Iqbal Singh Ghale (Deceased), Byant Singh Sehmi & Estate of Kashmira Singh*



Jandu (Deceased) where she has sought to file a further amended plaint seeking a declaration that Mohinder Singh Bamrah (deceased) was the sole and exclusive owner of the suit property known as land Reference No.37/261/6. The matter of ownership is live before the Environment and Land Court. The preliminary objection according to the Appellants cannot stand as the court will be inclined to make reference to the ownership facts that are disputed by the Appellants as well as the Respondent.

4. The Appellants also argue that the Respondent's Preliminary Objection does not raise pure points of law and that it is only in the interest of justice that the Appeal proceed to full hearing.

Analysis and Determination

5. Jurisdiction of a court flows from the Constitution or statute. A court cannot confer jurisdiction on itself. In *Owners of Motor Vessel Lillian 'S' vs. Caltex Kenya Ltd (1989) KLR* the court held that a court of law will down its tools the moment it realizes that it has no jurisdiction, as whatever it may do without jurisdiction amounts to naught.
6. The issue therefore that falls for determination is whether the Preliminary Objection raised by Respondent has merit. Article 162(2)(b) and 165(5) of the Constitution established a system of courts, and donates jurisdiction to each court. In particular the Environment and Land Court (ELC) was established to hear and determine disputes relating to the environment and use of land, occupation ownership of, and title to land.
7. Section 13(2) of the Environment and Land Act provides the jurisdiction of the ELC to be:
 - (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.

To that end then, a dispute which arises out of the environment and the use of land, occupation of and title to land squarely falls under the ELC Jurisdiction.

8. This Court upon perusal of the materials placed before it finds that what was at the center of the suit before the trial court was the question of ownership of the suit property Land Reference No.37/261/6. By its submissions, the Respondent has urged that the primary suit involved the subject land parcel held in common tenancy by the Respondents late father, and the dispute was over rent arrears that culminated to distress for rent.
9. I have looked at the Memorandum of Appeal dated 13/6/2023 at paragraphs 6, 7,8,9, 10 and 11. The Appellants speak of a dispute of ownership of the suit property, and who among the parties are entitled to the rent from the said property as well arrears from the flats in the property. By the above it is evident that the Appeal ought to lie to the ELC which is seized with the jurisdiction to hear matters of land



ownership, rent arrears and distress. In light of the above the Preliminary Objection dated 4/10/2023 succeeds.

10. The Respondent has urged for dismissal of both the Application and the Appeal. Section 3A of the *Civil Procedure Act* mandates the court to invoke its inherent powers to make orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Accordingly, I direct that this Appeal be transferred and is hereby transferred to the court with jurisdiction to hear and determine the Appeal; the Environment and land court.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF FEBRUARY, 2024.

J. N. MULWA

JUDGE

