



REPUBLIC OF KENYA



**Shariff Forex Bureau Co Ltd v Ahmed (Civil Appeal E382 of 2021)
[2024] KEHC 9320 (KLR) (Civ) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9320 (KLR)

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

CIVIL

CIVIL APPEAL E382 OF 2021

JM OMIDO, J

JULY 25, 2024

BETWEEN

SHARIFF FOREX BUREAU CO LTD APPELLANT

AND

MARIAM ADAN AHMED RESPONDENT

(Being an Appeal from the Ruling and Order of Hon. P. Muboli, Principal Magistrate delivered on 3rd June, 2021 in Milimani Commercial Court CMCC No. E096 of 2021)

RULING

1. This is an appeal from the ruling of the Magistrate’s Court (Hon. P. Muholi, PM) delivered on 3rd June, 2021 allowing the Respondent’s application against the Appellant for a temporary injunction pending the hearing and determination of Milimani Commercial Court CMCC No E096 of 2021.
2. A brief history of the dispute is that the Respondent herein filed a suit in the lower court against the Appellant seeking reliefs; that a permanent injunction be issued to restrain the Appellant from interfering with the Respondent’s possession of a dwelling house on the property known as LR No LR No 209/13284/2 (“the suit property”); that an order that an assessment of all improvements on the suit property for the last 20 years be made and that the same be deducted from the rent payable; that the court determines the date from when the rent of the suit property is due; and a determination as to the costs of the suit.
3. Contemporaneous with the plaint, the Respondent filed an application dated 7th January, 2021 for injunctive relief under certificate of urgency. The application was heard and determined vide a ruling that the lower court rendered on 3rd June, 2021, resulting in the following orders:



- a. Pending the hearing and determination of this suit, a temporary injunction does issue, restraining the Respondent whether by itself, its agents and/or employees from interfering in any way including but not limited to evicting her, proclaiming and/or attaching her property, locking of her dwelling house, refusing her access to the dwelling house, cutting out electricity and water and any harassment) with the Applicant’s peaceful possession of her dwelling to wit LR No 209/13284/2.
 - b. Costs of this application shall be in the cause.
4. Aggrieved by the ruling of the lower court, the Appellant preferred the instant interlocutory appeal vide the Memorandum of Appeal dated 2nd July, 2021, proffering the following grounds of appeal:
1. The Honourable Court erred in fact and law in failing to appreciate that the Appellant is the owner of the suit property.
 2. The Honourable Court erred in fact and law in failing to appreciate that the Respondent is a rent defaulting tenant in imperious possession of the property.
 3. The Honourable Court erred in fact and law in when it disregarded the Appellant’s evidence and submissions.
 4. The Honourable Court erred in fact and law when it granted an injunction pending the determination of the suit.
 5. The Honourable Court erred in fact and law in finding the Respondent had proven a prima facie case.
 6. The Honourable Court erred in fact and law in finding that the Respondent had proven his case on a balance of probabilities.
 7. The Honourable Court erred in law by granting the Respondent a carte blanche in that the Respondent shall reside on the Appellant’s property without paying rent.
5. From the record of appeal, it would appear that the Appellant had not filed a statement of defence in the lower court file by the time of filing this appeal.
6. Directions were issued by the court in this appeal that the same proceeds by way of written submissions the court issued timelines for the filing of the same. In compliance with the court’s directions, both parties filed their respective submissions.
7. I have perused the two sets of submissions and note that the Respondent has in her submissions raised the issue of jurisdiction, taking the position that this court is not clothed with the requisite jurisdiction to entertain the instant appeal.
8. It is trite law, jurisdiction is everything as it denotes the authority or power to hear and determine judicial disputes. It was the finding of the court in the case of *R v Karisa Chengo* [2017] eKLR, that jurisdiction is that which grants a court authority to decide matters by holding;

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or 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 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 both these characteristics.where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

9. I also take cognizance of the finding of the Supreme Court in the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR where it was held that:

“A court 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 other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings. This court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (applicant), Constitutional Application Number 2 of 2011. Where the *Constitution* exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

10. The issue of jurisdiction can be raised by a party or by the court sua sponte, at any stage of the proceedings or even on appeal (see *Constantine Joseph Advocates LLP v Attorney General* [2022] eKLR). It can be raised by a party in the pleadings through a preliminary objection or even in the submissions.
11. Once a court’s jurisdiction is challenged, the issue must be determined first before the court takes further proceedings or considering other issues (see *National Social Security Fund Board of Trustees v Kenya Tea Growers Association & 14 others* (Civil Appeal 656 of 2022) [2023] KECA 80 (KLR) (3 February 2023) (Judgment)).
12. The Respondent urges that whereas Section 9(a) of the *Magistrates’ Courts Act* Cap 10 Laws of Kenya confers upon the Magistrates Courts the power to hear and determine claims relating to environment and land matters subject to the pecuniary jurisdiction of the particular magistrate handling the matter, the High Court does not have the corresponding appellate jurisdiction to determine such matters on appeal. The Respondent states that the court with the appellate jurisdiction over such matters is the Environment and Land Court. The Respondent states that the suit before the lower court was one such matter.
13. It is instructive from the record that what set into motion the proceedings before the lower court was the action by the Appellant of proclaiming the Respondent’s household goods in distraint for rent. That was the basis upon which the application for injunction was filed. The foregoing is also clear from the submissions by both parties.
14. Back to the objection to jurisdiction, it is claimed by the Respondent, as I understand her to say that as this matter concerns a tenancy relationship between the parties, rent arrears arising therefrom and the right to levy distress for rent, this court has no jurisdiction to entertain the appeal and that the same ought to have been preferred to the Environment and Land Court.
15. By the very act of attempting to levy distress against the Respondent, the Appellant considers the Respondent to be its tenant. The Respondent alleges in the plaint before the lower court that the Appellant made illegal and exaggerated demands for rent and proceeded to send an auctioneer to proclaim her household goods with the intention of levying distress for rent.



16. The jurisdiction of the Environment and Land Court is provided for in the Constitution and the Environment and Land Court Act, Cap 8D Laws of Kenya. the Constitution provides as follows at Article 162 (2) and (3):

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- (2). Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –
 - (a) employment and labour relations; and
 - (b)) the environment and the use and occupation of, and title to, land.
- (3). Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

17. The Environment and Land Court is the court contemplated in Article 162 (2)(b) with the mandate and jurisdiction to hear disputes relating to the environment and the use and occupation of, and title to land.

18. The Environment and Land Court Act serves to operationalize Article 162(b) and (c) of the Constitution, and the said statute is the vehicle through which parliament determined by legislation the jurisdiction and functions of the Environment and Land Court in line with Article 162(3).

19. On jurisdiction of the court created under Article 162(2)(b), Section 13 of the Environment and Land Court Act provides as follows:-

13. 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.
- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.



- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
- (5) Deleted by [Act No 12 of 2012](#), Sch.
- (6) Deleted by [Act No 12 of 2012](#), Sch.
- (7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including –
 - (a) interim or permanent preservation orders including injunctions;
 - (b) prerogative orders;
 - (c) award of damages;
 - (d) compensation;
 - (e) specific performance;
 - (f) restitution;
 - (g) declaration; or
 - (h) costs.(Underlined emphasis mine).

20. The jurisdiction of this court (the High Court) is provided for under Article 165(3), (4), (5), (6) and (7) of the [Constitution](#), which states as follows:

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- (3) Subject to clause (5), the High Court shall have –
 - (a) unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
 - (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of –
 - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
 - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and



- (iv) a question relating to conflict of laws under Article 191; and
 - (e) any other jurisdiction, original or appellate, conferred on it by legislation.
- (4) Any matter certified by the court as raising a substantial question of law under clause (3) (b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.
 - (5) The High Court shall not have jurisdiction in respect of matters –
 - (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
 - (b) falling within the jurisdiction of the courts contemplated in Article 162 (2).
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

(Underlined emphasis mine).

21. As stated above, the issues in the lower court matter relate to tenancy, a dispute over rent arrears and the resulting attempt at restraint for rent.
22. As was held in the case of *Mocha Hotel Limited v Kwanza Estates Limited* (Environment & Land Case 14 of 2022) [2023] KEELC 18407 (KLR) (29 June 2023) (Ruling) disputes relating to or emanating from a tenancy are directed to the Environment and Land Court as that is the court that has the necessary jurisdiction to determine such issues. That is so because a tenancy is an instrument that gives interest in land and the Environment and Land Court is the court that has the power to hear and determine disputes that may arise from instruments that grant enforceable interests in land.
23. The court in the above case observed as follows:

“What I am trying to demonstrate is that issues related to tenancies fall within the jurisdiction of the *Environment and Land Court Act*. They will indeed fall within the jurisdiction of this court as tenancy relates to use and occupation of land for which, pursuant to Article 162 (2) (b) of the *Constitution* this court is vested with jurisdiction. Tenancy grants an enforceable interest in land, and where there is a tenancy agreement, that would be an instrument granting an enforceable interest in land as outlined in Section 13 of the *Environment and Land Court Act* which I have produced above.

The cause of action in this case arises out of a tenancy, and as I have taken the trouble to demonstrate above, tenancies fall within the jurisdiction of this court. When a person is on land as a tenant, it is common for such person to have goods on it. These may include furniture and fittings. There is of course a right of distress given to a landlord, and also a right to evict a tenant, and distress would be on goods not land. However, that right to distress arises out of a tenancy, and given that position, the court with jurisdiction to interrogate whether a landlord has properly exercised his right to distress, or to evict, would be the



Environment and Land Court, for it is this court which is vested with jurisdiction to hear disputes relating to and arising out of tenancies and occupation of land.

Within this case, as I have pointed out earlier, but it is worth repeating, the plaintiff complains that she was issued with an illegal notice to pay rent. She complains that her goods were illegally distrained. She complains that the defendant illegally evicted her from the suit premises. Arising from that, she claims damages. Damages, as can be seen in Section 13 (7) (c) of the *Environment and Land Court Act* is one of the remedies that the court can grant. And as far as I can see, the claim of damages arises out of the deprivation to use and occupy land. The court, before going into the issue whether or not the plaintiff is entitled to damages, must first determine whether the landlord properly levied distress and legally took over the use and occupation of the premises. The complaint of conversion of goods is tied to the hip with the fact that it was an exercise of the right of the landlord to levy distress under the tenancy. It is not conversion by a stranger. Before delving into determining whether or not there is conversion, the court has to determine whether or not the landlord properly exercised his right to levy distress, which again falls again within the tenancy, for which this court would have jurisdiction.

In my opinion, any issue arising out of a breach of tenancy, and damages resulting from disregard of a tenancy agreement, would fall within the jurisdiction of this court, for you cannot detach this from the tenancy. In the same vein, if one wishes to present a case of illegal eviction from land, which is precisely what the plaintiff complains about, this court would have jurisdiction.”

24. The position in the lower court matter as presented by the parties is that the Respondent was still in occupation of the suit premises when the appeal was filed. This clearly is an appeal that should have been filed before the Environment and Land Court and not this court. As we have seen above, under Article 165(5)b of the *Constitution*, the High Court does not have power to determine matters falling within the jurisdiction of the Environment and Land Court.
25. Having determined that I do not have jurisdiction to entertain the appeal herein, I am guided by the Court of Appeal in the case of *Owners of the Motor Vessel “Lilian S” v Caltex Oil (Kenya) Limited* [1989] KLR 1, that “Jurisdiction is everything. Without it, the court must lay down its tools”.
26. In the result, as I am not seized of jurisdiction to consider this appeal, the same having been filed before the wrong court, I proceed to strike it out with costs to the Respondent.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 25TH DAY OF JULY, 2024

JOE M. OMIDO

JUDGE

For The Appellant: Mr. Kiptoo.

For The Respondent: Ms. Mwangi Holding Brief For Ms. Kinaro.

Court Assistant: Ms. Njoroge.

