



Kamairoh & another v Esquire Investments Limited & 2 others (Miscellaneous Civil Application 1 of 2024) [2024] KEHC 13825 (KLR) (18 September 2024) (Ruling)

Neutral citation: [2024] KEHC 13825 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
MISCELLANEOUS CIVIL APPLICATION 1 OF 2024**

SN MUTUKU, J

SEPTEMBER 18, 2024

**IN THE MATTER OF SECTION 4 (A), 6, 7, 24, 27 (B) (E) (F) (H)
(K), 28(1), 29(1) (2) OF THE CONTEMPT OF COURT ACT 2016**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS PURSUANT TO ARTICLES 2,(1), 19,(2), 27(3) & (5), 28,
29(C), 33,(2), 35(1) (B), 46,(1), (A-D)50,(1), 259 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF THE CONTITUION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE & PROCEDURES RULES 2013**

BETWEEN

TIMOTHY MWIRABUA KAMAIROH 1ST APPLICANT

ROLLER BALLER 2ND APPLICANT

AND

ESQUIRE INVESTMENTS LIMITED 1ST RESPONDENT

LLOYD MASIKA LIMITED 2ND RESPONDENT

PINKRTONS KENYA LIMITED 3RD RESPONDENT

RULING

The Application

1. By a Chamber Summons dated 22nd December 2023, the Applicants an the following orders:



- a. That an order of committal be made against the Respondents to prison for such period as this Honourable Court may deem fit and just.
 - b. That a fine of Kshs 200,000 be imposed against the directors in the officers of Esquire Investment Limited, Lloyd Masika Limited and Pinkerton's Kenya Limited for contempt of court.
 - c. That a fine of Kshs 200,000 be imposed against the managers working for the Respondents herein who are situated at Kajiado/Kaputiei-North/111 otherwise known as "Kitengela Mall" who are responsible for implementing the contempt of court orders.
 - d. Any other order deemed expedient in the circumstances.
2. The grounds in support of the application are that the Respondents have disobeyed court orders issued by Hon. Joyce Osodo in BPRT/E1252 to the effect that the 1st and 2nd Respondents were prohibited from interfering with the Applicants business located on the 2nd Floor of Kajiado/Kaputiei-North/111 (Kitengela Mall) by varying the terms of the controlled tenancy and that the 1st and 2nd Respondents have been using the 3rd Respondent to frustrate the Applicants by enforcing unlawful terms of the controlled tenancy.
 3. Through the Supporting Affidavit sworn on 22nd December 2023, it is deposed that the orders of 18th December 2023 have been served on the Respondents but they have refused to comply with the orders; that they have resorted to forceful, malicious and grave misconduct by coercing the Applicants to sign a letter dictating unlawful terms and by intentionally barricading the use of the common area which is in contravention of the said court orders.

The Preliminary Objection

4. The Respondents have raised a Notice of Preliminary Objection (PO) dated 2nd July 2024 on the grounds that the application does not disclose any reasonable cause of action as the Respondents have not been in contempt of the Court Order issued by The Hon Joyce Osodo in BPRT/E1252/2023, Timothy Mwirabua Kamairoh and Roller Ballers Versus Esquire Investments Limited and Lloyd Masika Ltd dated December 18, 2023; that under Order 2 Rule 15 (1) of the [Civil Procedure Rules, 2010](#) provides that any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—
 - a. it discloses no reasonable cause of action or defence in law; or
 - b. it is scandalous, frivolous or vexatious; or
 - c. it may prejudice, embarrass or delay the fair trial of the action;
 - d. it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
2. The Respondents have stated that this matter has been overtaken by events, rendering the application moot as the Respondents no longer have a landlord-tenant relationship with the Applicants.

Submissions

5. This Court directed the parties to address it on the issue of jurisdiction. Parties have filed submissions which they highlighted on 9th July 2024.



6. The Applicants filed submissions dated 23rd January 2024. I have noted that the Applicants' submissions relate to the contempt of court proceedings. Little was submitted regarding the jurisdiction of this court to determine this matter. It was submitted that this court has jurisdiction to hear and determine this matter because contempt of court proceedings are quasi-criminal in nature.
7. On the other hand, the Respondents have raised and submitted on the following issues:

Whether this Honourable Court has jurisdiction to entertain the Application?

8. To address this issue, the Respondents have submitted that the subject matter of these proceedings relates to a relationship between a landlord and a tenant; that such proceedings are initially litigated at the Business Premises Rent Tribunal as established under the *Landlord and Tenant (Shops, Hotels Catering Establishment) Act* Cap 301 Laws of Kenya; that Article 162(2)(b) of the *Constitution* establishes the Environment and Land Court with jurisdiction over disputes relating to the environment and the use and occupation of, and title to land and that Section 13 of the *Environment and Land Court Act* expounds on the jurisdiction of this Court to include 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.
9. It was submitted that under section 13 (2) of the *ELC Act*, the ELC has jurisdiction to 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.
10. It was submitted that from the above quoted provisions of the *Constitution* and the *Environment and Land Court Act*, the Environment and Land Court has been expressly clothed with jurisdiction to deal with the issues relating to use of land and that under Section 29 of the *ELC Act*, that court is clothed with jurisdiction to accordingly punish for contempt of court in concurrence with Section 5 (1) of the *Judicature Act* that vests in the superior courts the power, like those of the High Court of Justice in England, to punish any party who violates its orders.
11. It was submitted that the Application dated 22nd December 2023 ought to have been filed in the Environment and Land Court rather than the High Court. As such, this Honourable Court lacks jurisdiction to entertain the same. The Respondents relied on the decision of the Court in *Hasmo Agencies Limited v National Social Security Fund* (Environment & Land Case E052 of 2023) [2024] KEELC 1284 (KLR) (7March 2024) (Ruling) to support their submissions.

Whether the Application has been overtaken by Events?

12. It was submitted that during the proceedings of 4th July 2024, parties informed the Court that the Orders of the Tribunal subject of the instant Application are no longer in force, the matter having been dismissed on 28th May 2024 and that this Application was rendered moot and proceeding to



prosecute the same will be tantamount to engaging in a mere academic exercise and a waste of precious judicial time.

13. It was submitted that the Applicant is no longer at the premises as conceded by the Applicant's Counsel on record and as such, the Landlord-Tenant relationship effectively terminated; that there is nothing to enforce; that the instant proceedings are therefore in contravention of Order 2 Rule 15 (1) (a) of the Civil Procedure Rules, which provides that at any stage of the proceedings, the Court may allow to be struck out any pleadings on grounds that it discloses no reasonable cause of action.
14. The Respondents urged this Honourable Court to find that the P.O. is merited and dismiss the proceedings herein with costs to Respondents.

Determination

15. I have considered this matter. The issue of jurisdiction, once raised, must be dealt with first to enable the court to determine if it is clothed with the requisite jurisdiction to handle the matter before it.
16. It is trite that without jurisdiction, the authority to handle the matter before a court, that court has no business dealing with that matter (see Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Ltd [1989] KLR 1). Jurisdiction either flows from the Constitution or statute or both (see Samuel Kamau Macharia and Another v. Kenya Commercial Bank Limited & 2 others [2012] eKLR).
17. I have read Article 162 (2) (b) of the Constitution. I have also read section 13 of the ELC Act. As the pleadings show, this matter was before the BPRT. Section 15 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301), appeals from the Tribunal are filed at the ELC. The section provides that:

Any party to a reference aggrieved by any determination or order of a Tribunal made therein may, within thirty days after the date of such determination or order, appeal to the Environment and Land Court:

Provided that the Environment and Land Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.

18. The ELC is clothed with the jurisdiction to punish for contempt of court. Section 29 of the ELC Act provides that:

Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.

19. After careful consideration of the PO and the submissions on the matter, it is my considered view, and I so find, that the PO is merited. This matter was filed in the wrong court. This court as constituted lacks jurisdiction to hear and determine the Chamber Summons dated 22nd December 2023. Consequently, I uphold the PO and hereby dismiss the Chamber Summons before me. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 18TH SEPTEMBER 2024.

S. N. MUTUKU

JUDGE

