



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**Kenya Industrial Estates Limited v Post Bank Credit Limited (In Liquidation) & 4 others
(Commercial Case 56 of 2018) [2023] KEHC 2358 (KLR) (21 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
COMMERCIAL CASE 56 OF 2018
RE ABURILI, J
MARCH 21, 2023**

BETWEEN

KENYA INDUSTRIAL ESTATES LIMITED PLAINTIFF

AND

POST BANK CREDIT LIMITED (IN LIQUIDATION 1ST DEFENDANT

NYALUONYO AUCTIONEERS 2ND DEFENDANT

NATIONAL BANK OF KENYA LIMITED 3RD DEFENDANT

LAND REGISTRAR, KISUMU COUNTY 4TH DEFENDANT

**MICHAEL GEORGE OLUOCH NYAMODI (LEGAL REPRESENTATIVE
OF THE ESTATE OF THE LATE VERONICA AKONG'O**

NYAMODI) 5TH DEFENDANT

RULING

1. This matter was filed/initiated in 2016 vide Plaintiff dated November 21, 2016 before the Employment and Labour Relations Court, Kisumu.
2. Simultaneous with the filing of the plaintiff, the Plaintiff, Kenya Industrial Estates Ltd (KIE) did file an application for injunction, which application was heard interpartes and dismissed vide a ruling delivered on May 16, 2018 by Hon. Mr. Justice S. M. Kibunja of ELC. As soon as the ruling was rendered, the Learned Judge, with the concurrence of all the parties' counsel, transferred the matter to the High Court at Kisumu for hearing and final determination. This order for transfer was informed by a ruling in Mombasa Court of Appeal in Civil Appeal No 83 of 2016 where it was held that matters charges and mortgages were of a commercial nature and therefore the High Court is the court that was vested with jurisdiction to hear and determine the same.



3. This matter has been pending before this court since 2018 with the court believing that it had jurisdiction to hear and determine the same and even giving directions on the hearing and certifying the suit as ready for hearing. When the file was brought before me to fix a hearing date, and as no issue had been raised, I did so.
4. It has, however, emerged that from the pleadings, the main issues for determination are not just of a commercial nature. The issues involve determination of ownership and use of the subject parcels of land namely Kisumu Municipality/Block 2/102 and 103 which were used as security for loan facilities with the 1st and 3rd defendants, by the 5th defendant Veronica Akong'o Nyamodi (now deceased).
5. It is pleaded that the 5th respondent (now through her legal representative) fraudulently obtained title to the suit parcels of land in her capacity as the plaintiff's Managing Director and used the same as security to secure loans from the 1st and 3rd defendants.
6. The plaintiff in her Complaint aforementioned seeks orders among others, a declaration that the suit properties belong to the plaintiff; Rectification of the land register to the said parcels land by the Land Registrar who is the 4th defendant; striking out from the land registers the name of the 5th defendant; entering the name of the plaintiff as the proprietor in the property section of the said land registers; among other orders.
7. All parties are now in agreement that those reliefs as sought fall within the exclusive jurisdiction of the Environment and Land Court (ELC).
8. It is trite law that jurisdiction is everything without which a court of law acts in vain. I agree that the parties did not interrogate the issues for determination in this suit before allowing it to be transferred to this court from the ELC and that had they so interrogated the issues involved, they would have discovered as they have, now, that the question of the charges and therefore the injunction to stop the sale of the charged properties was only but a secondary issue and that the core issue is ownership, title to and use of the suit parcels of land.
9. That being the case, and in view of the clear provisions of article 162 (2) (b) of the Constitution which vests in the ELC jurisdiction to hear and determine disputes relating to the environment and the use and occupation of and title to land; as read with the provisions of article 165(5) (b) of the Constitution which expressly bars the High Court from hearing and determining disputes reserved for the courts contemplated in Article 162 (2) (a) and (b) of the Constitution namely the Employment and Labour Relations Court and the Environment and Land Court, and as Parliament enacted the ELC Act and other pieces of legislation conferring this special jurisdiction to the ELC, (See section 13 of the ELC Act, I hereby find that the court that has jurisdiction to hear and determine this suit is the Environment and Land Court.
10. I further find that the order of May 16, 2018 transferring this suit from ELC to the High Court was made Per incuriam.
11. Having said so, I hereby direct that this entire file be placed before the Environment and Land Court forthwith for further directions as to the hearing thereof.
12. This Ruling to be typed forthwith and submitted together with the file to the Deputy Registrar, ELC for onward placement before the ELC Judge forthwith.
13. Parties to appear before the ELC Judge on the April 19, 2023 for further directions, the matter having stayed in the wrong court for quite a while.
14. I so direct.



15. From the High Court, the file is closed.

Dated, Signed and Delivered at Kisumu this 21st Day of March, 2023

R. E. ABURILI

JUDGE

Page 4 of 4

