



REPUBLIC OF KENYA



Lakshminarayan & another v Bank of Baroda (Kenya) Limited & another (Civil Case E474 of 2020) [2023] KEHC 2400 (KLR) (Commercial and Tax) (23 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E474 OF 2020
A MABEYA, J
MARCH 23, 2023**

BETWEEN

KOLLENGODE VENKATACHALA LAKSHMINARAYAN 1ST PLAINTIFF

ANAPULA AMBIKAVATI 2ND PLAINTIFF

AND

BANK OF BARODA (KENYA) LIMITED 1ST DEFENDANT

MARY NUNGARI NDURUNGI 2ND DEFENDANT

RULING

1. By a plaint dated 3/7/2020, the plaintiff sought that the sale and transfer of the property known as Villa No D8 on LR Number 9118(I.R 99029) by the 1st defendant to the 2nd defendant be nullified. The 1st defendant filed a defence dated 9/3/2021 wherein it raised a preliminary objection to the suit for want of jurisdiction by this Court.
2. The preliminary objection was canvassed by way of written submissions which I have considered.
3. The 1st defendant submitted that the prayers sought by the plaintiff in the plaint fell under the purview of the Environment and Land Court (ELC). That the plaintiff in prayer a), b) and c) challenged the ownership of the property which falls under the jurisdiction of the ELC. It was submitted that this court did not have jurisdiction to transfer the suit to another court and the recourse would be to strike out the suit.
4. On the other hand, the plaintiff submitted that the 1st defendant in challenging the jurisdiction of the court failed to state the limits and restrictions of this court's jurisdiction. That the plaintiff's cause of action was the accounts, failure to disburse funds as well as nonpayment of loan facilities, interest, fraud and illegality as opposed to the defendant's assertions that the cause of action was the charge



instruments. Counsel further submitted that the power to transfer the suit did not arise as the plaintiff suit was properly before the court.

5. I have considered the preliminary objection and the submissions by both parties. The main issue is whether this court has jurisdiction to determine this suit.
6. A preliminary objection was defined in the *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors Ltd* (1969) EA 696 to consist of a point of law which is pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.

7. Sir Charles Newbold, P. stated therein: -

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

8. In the present case, the objection was grounded on the fact that this court lacks jurisdiction to determine the suit and that the jurisdiction lies with the ELC. The 1st defendant’s contention was based on the prayers sought in the plaint. That the plaintiff was challenging the process of sale with a view to be conferred with the ownership of the suit property.
9. The plaintiff on the other hand opines that the court should not confine itself on prayers a) to c) of the plaint only but should also look at the whole plaint to ascertain the cause of action. It was averred that the cause of action is with regards to the accounts, failure to disburse funds, non-payment of loan facilities breach of duty of care and the list goes on.
10. In *Mary Wambui Munene v Peter Gichuki Kingara and Six others* [2014] eKLR, the Supreme Court held that jurisdiction is a pure point of law which should be resolved on priority basis.
11. The jurisdiction of the ELC set out by article 162(2) and (3) of the Constitution of Kenya provides as follows: -
 - “2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
 - 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).”
12. Pursuant thereto, Parliament enacted the Environment and Land Court Act, 2012. Section 13 thereof outlines the jurisdiction of that court as follows: -
 - “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.”

13. I have perused the record. From the plaint dated 3/7/2020, the plaintiff’s cause of action is the contract between the plaintiff and the 1st defendant, the execution thereof and the consequences arising therefrom. Through a Letter of Offer, the 1st defendant had agreed to offer a facility to the plaintiff for the purchase of the suit property. The plaintiff faults the defendant for breach of contract for failing to advance some amount, breach of duty of care and fraud and illegality on its part.

14. In this case, the predominant issue in dispute stems from the Letter of Offer and the legal obligations arising therefrom. It does not matter that it touches on the purchase of land. The net effect is the commercial transaction between the parties which is a dispute that squarely falls within the exclusive jurisdiction of the Commercial and Tax Division of the High Court. The issue was not with reference to use or occupation of land and therefore cannot be said to be under the ELC court’s jurisdiction.

15. In the premises, I find that the suit is properly before court. The preliminary objection is without merit and is therefore dismissed with costs.

16 It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MARCH, 2023.

A. MABEYA, FCIArb

JUDGE

