



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CASE NO.E062 OF 2020

TRYSTAR INVESTMENTS LTD.....APPLICANT

VERSUS

BRAND IMPORTS (AFRICA) LTD.....1ST RESPONDENT

CLEAR REAL TRADERS AUCTIONEERS2ND RESPONDENT

RULING

1. The Applicant filed a notice of motion dated 9th October 2020 in which it sought transfer of Nairobi CMCC No.186 of 2017 **Brand Imports (Africa) Limited Vs Trystar Investments Limited & Another** to this Court for hearing and determination. The Applicant contends that it intends to raise a counter-claim of over Kshs.125,000,000/= which is way beyond the monetary jurisdiction of the Chief Magistrate's Court.
2. The 1st Respondent opposed the Applicant's application through a replying affidavit sworn on 18th June 2021. The 1st Respondent contends that the suit in the lower court has been overtaken by events in that the 1st Respondent has since moved out of the Applicant's go downs and handed over the keys to the Applicant and that in any case, the suit abated long time ago as there were no summons applied for.
3. The 1st Respondent therefore argues that it will be a waste of judicial time to transfer a suit, which has been overtaken by events and which it does not intend to pursue.
4. I have considered the Applicant's application as well as the opposition to the same by the 1st Respondent. I have also considered the oral submissions by counsel for the parties during the hearing. The only issue for determination is whether the lower court suit should be transferred to this court.
5. The 1st Respondent had leased five go downs from the Applicant. The 1st Respondent ran into arrears of rent. The Applicant instructed an auctioneer to levy distress for rent against the 1st Respondent. The 1st Respondent then moved to the lower court and filed a suit against the Applicant and the Auctioneer who had distrained for rent. The 1st Respondent also filed an application in which it sought orders of the court restraining the Applicant and the Auctioneer from proceeding with the distress for rent.
6. The Application was heard and dismissed. The 1st Respondent then moved out of the go downs effectively rendering this suit *otiose*. The 1st Respondent states that the suit has been overtaken by events and that there is nothing remaining for hearing to be transferred to this court.
7. I can see from the averments of the Applicant that the 1st Respondent is retaining two go downs. It is alleged that it surrendered only here out of five go downs. Whatever the case, the case in the lower court whether it has been overtaken by events is still within the jurisdiction of the lower court. There may be issues of costs to be addressed if the suit is finally withdrawn for having been overtaken by events.
8. The question which this court will answer is whether there is need to transfer the suit to this court. The answer to this is a no answer. The case is within the jurisdiction of the lower court and as it has been overtaken by events, the court will be wasting judicial time to transfer such a case. If the Applicant has any claim, it can file a fresh suit before the Environment and Land Court.
9. The Applicant has drafted a counter-claim based on the lower court case. This is an attempt to file a claim in a court without jurisdiction and this court cannot transfer a case which is based on pleadings prepared based on a court without jurisdiction. I find no merit in this application which is dismissed with costs to the 1st Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18TH DAY OF NOVEMBER 2021

E.O.OBAGA

JUDGE

IN THE VIRTUAL PRESENCE OF :-

KAULA FOR THE APPLICANT

COURT ASSISTANT: MERCY

E.O. OBAGA

JUDGE