

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. E152 OF 2020

SILAS BIYOGO ONDIMU.....PLAINTIFF

VERSUS

MONICA W. MUNDARA.....1ST DEFENDANT

SORTMASTERS INVESTMENT LIMITED.....2ND DEFENDANT

RENT RESTRICTION TRIBUNAL.....3RD RESPONDENT

RULING

There is before me an application by way of Notice of Motion under several Articles of the Constitution cited thereunder seeking several orders listed on the face of the application. The application is supported by grounds set therein alongside the supporting affidavit of the plaintiff/applicant.

Following service of the application the 1st and 2nd defendants/respondents filed a Notice of Preliminary Objection dated 29th October, 2020. The bottom line of objection is that the application violates the provisions of the Rent Restriction Act, Cap 296 Laws of Kenya and Order 42 Rule 6 of the Civil Procedure Rules.

It is clear that the genesis of this dispute is to be found in the proceedings before the Rent Restriction Tribunal, the 3rd respondent, where the applicant is a tenant against the 1st respondent as the landlady, and 2nd respondent as the agent.

The Notice of Preliminary Objection observes that this matter has been irregularly filed in this court as an appeal by way of Notice of Motion.

The Environment and Land Court Act No. 19 of 2011 states at Section 13 (2) as follows,

“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.”

An appeal from the Rent Restriction Tribunal, going by the above provisions, shall be lodged before the Environment and Land Court. Considering that this court is divested of any jurisdiction by virtue of the above provisions, I elect not to address the application or notice of preliminary objection.

It is within my knowledge that some courts have held that, where a matter is filed in a court without jurisdiction to deal with the same, it should be struck out. I however hold a different view in that, it is in order to transfer such a case to the right court to save on costs.

In the circumstances, while declining jurisdiction to deal with the matter at hand, I order that it be transferred to the Environment and Land Court for hearing and determination. This file shall be placed before the Presiding Judge of the Environment and Land Court within 14 days of this order for appropriate directions. No order as to costs.

Dated, signed and delivered at Nairobi this 11th day of March, 2021.

A. MBOGHOLI MSAGHA

JUDGE