



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL CASE NO. 4 OF 2020

FAMILY BANK LIMITED.....PLAINTIFF

VERSUS

NANCY CHEPKEMOI CHERUIYOT.....DEFENDANT

R U L I N G

1. The Defendant filed a Notice of Preliminary Objection (NOPO) to the Plaintiff's Application dated 2/3/2020 and the entire suit on the following grounds:-

(i) THAT the Plaintiff's Application and entire suit is devoid of Jurisdiction as the Court empowered to hear this case in the Environment and Land Court (ELC) established under Order Article 162 (2) (b) of the Constitution of Kenya as read with the Environment and Land Court Act No.19 of 2011.

(ii) THAT the relief sought relate to the use and occupation of 3000 square feet and the development on LR.No.8839/53 located in Litein Trading Centre (hereafter referred to as the suit property).

(iii) THAT the Court should strike out this suit in it's entirety.

2. The parties filed written submissions which I have duly considered. The issue for determination is whether or not this court is seized of the Jurisdiction to hear this suit.

3. The Defendant submitted that the case relates to use and occupation of LR. No.8839/53 located at Litein Trading Centre. (The suit Property).

4. Opposing the Notice of Preliminary Objection, the Plaintiff submitted that a Preliminary Objection must be based on pure points of law which when argued will dispose of the matter and further that this Court has Jurisdiction to determine this suit which is seeking Kshs.28,492,757 being the sum of money the Plaintiff incurred in construction of banking premises on the suit property and therefore the purpose of the suit is to seek to recover the money.

5. The Plaintiff further submitted that the case has nothing to do with the occupation of the suit property and further that should the court find that the predominant issues raised fall within the ELC Court, the Court has Jurisdiction to transfer the case to the ELC Court.

6. I have perused the Plaint filed herein by the Plaintiff where the Plaintiff is seeking the Following Orders.

(i) The sum of Kenya Shillings Twenty Eight Million Four Hundred and Ninety Two Thousand, Seven Hundred and Fifty Seven (Kshs.28,492,767) being the sum of money incurred by the Plaintiff in construction of banking premises on the suit property.

(ii) A declaration that the Defendant is by her conduct estopped from claiming vacant possession of that portion of property marked. A measuring 3000 square feet being proposed subdivision plan over the suit property.

(iii) A permanent injunction restraining the Defendant from evicting or in any way interfering with the Plaintiff's quiet possession of that portion of property marked A measuring 3000 square feet being proposed subdivision plan over the suit property until such time as the Plaintiff recovers the cost of constructing the banking premises.

7. I find that the issues for determination relate to use and occupation of the suit premises and the Court which has Jurisdiction to hear this suit is the ELC Court.

8. I allow the preliminary Objection and direct that this suit be and is hereby transferred to the ELC Court with immediate effect for hearing

and determination.

9. The Plaintiff will pay the Defendant's costs of the Preliminary Objection.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 9TH DAY OF APRIL, 2021.

A. N. ONGERI

JUDGE