



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CIVIL APPEAL NO. E017 OF 2021**

**(Appeal arising from ruling and order made in Kakamega**

**CMC Miscellaneous Civil Application No. E011 of 2021, by Hon.**

**D. Alego, Senior Principal Magistrate (SPM), of 22<sup>nd</sup> February 2021)**

**LAWRENCE M. CHORE.....APPELLANT**

**VERSUS**

**MARCELLA K. ONG'AYO.....RESPONDENT**

**RULING**

1. The matter for determination is the Motion, dated 22<sup>nd</sup> March 2021. It is for stay of execution of a decree made in the primary court, pending the hearing and determination of the instant appeal. The principal ground upon which the orders are sought, is that the primary court had no jurisdiction to entertain the matter given that the dispute turned on issues that fell within the jurisdiction of the Business Premises Rent Tribunal.
2. The application has been responded to by the respondent, interim relief was granted, and directions were given for disposal by way of written submissions, and such submissions have been filed.
3. From the material before me, it would appear that there were proceedings between the same parties in the Kakamega Business Premises Rent Tribunal Case No. 126 of 2019. An order was made on 23<sup>rd</sup> July 2019, restraining the respondent herein from harassing intimidating, evicting or interfering with the peaceful occupation of the appellant in the business premises built on Kakamega Municipality/1/72. The dispute was founded on a tenancy agreement between the parties, dated 21<sup>st</sup> November 2018.
4. The decree that has been appealed against has not been placed before me, for what is attached to the application is an unsigned and unsealed draft decree, wherein the primary court is alleged to have set aside the orders made in Kakamega Business Premises Rent Tribunal Case No. 126 of 2019, on 23<sup>rd</sup> July 2019, and issuing an eviction order against the appellant.
5. The dispute before the Business Premises Rent Tribunal, and I suppose at the primary court, turns on a tenancy. Tenancies are about occupation and use of premises. The High Court has no jurisdiction, by virtue of Article 165(5) of the Constitution, over such disputes, for Article 162(2) of the Constitution has vested that jurisdiction exclusively on the Environment and Land Court. I have no jurisdiction, therefore, to enquire into the matters that are raised in the Motion before me and in the appeal. The appellant should have placed this matter before the court with jurisdiction.
6. The Court of Appeal in *Phoenix of EA Assurance Company Limited vs. SM Thiga t/a Newspaper Service* [2019] eKLR (**Karanja, Gatembu & Sichale JJA**) and *Equity Bank Limited vs. Bruce Mutie Mutuku t/a Diani Tour Travel* [2016] eKLR (**Makhandia, Ouko & M'Inoti JJA**), has held that where the High Court has no jurisdiction over a matter before it, it would have no jurisdiction, under sections 17 and 18 of the Civil Procedure Act, Cap 21, Laws of Kenya, to transfer the suit, in respect of which it has no jurisdiction, to the court with jurisdiction..
7. That being the case, I have no option but to strike out the Motion, dated 22<sup>nd</sup> March 2021, as well as the appeal itself, commenced by a memorandum of even date. The respondent shall have the costs. It is so ordered.

**DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 10<sup>TH</sup> DAY OF DECEMBER, 2021**

**W MUSYOKA**

**JUDGE**