



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MILIMANI (NAIROBI)
COMMERCIAL AND TAX DIVISION
CIVIL CASE NO.105 OF 2014

EZEKIEL KAMAU.....PLAINTIFF

VERSUS

MUCHOKI MWAI WILSON.....1ST DEFENDANT

OILDEN LOGISTICS LIMITED.....2ND DEFENDANT

OILDEN LIMITED.....3RD DEFENDANT

NATIONAL LAND COMMISSION.....4TH DEFENDANT

RULING

1. The plaintiff through a plaint dated 17th March 2014 sued the defendant averring that at all material times the plaintiff and the defendant have been business partners, co-directors and joint shareholders in the business located at off Mombasa road near Athi River. In this suit the plaintiff prays for judgment against the defendant for:

- a) That the Defendant do account for the proceeds of the business from April 2012 to the Plaintiff.
- b) That the property of the business be valued for the purpose of sale of by-off.
- c) That the Defendant do allow the Plaintiff back into the business.
- d) That the due share of the proceeds be paid to the Plaintiff.
- e) Any other or further order as the Court may deem fit and proper to grant.

2. The defendant filed defence dated 8th September 2015 admitting that this court has jurisdiction to hear and determine this matter.

3. The defendant subsequently filed a Notice of Preliminary Objection dated 16th April 2018 seeking that the plaintiff's suit be struck out on the following grounds:-

- i) THAT this Honourable Court has no jurisdiction to handle this matter as the application before it primarily deals with land compensation.
- ii) THAT right Court to handle the application presently before it is the Environment and Land Court Act Number 19 of 2011.
- iii) THAT no formal application has been served upon the Defendant for purposes of enjoining the interested parties.
- iv) THAT the application filed herein is incompetent and an abuse of this Honourable Court's process.

4. The both counsel filed written submissions in support of their rival positions. The defendant filed submissions on 23rd October 2018

whereas the plaintiff filed submissions on 30th October 2018.

5. The contention in the defendant's preliminary objection is that the court lacks jurisdiction to entertain this suit as the plaintiff seeks interest in land and/or the value of the property belonging to a company which is comprised of the land and development therein. It is in view of the foregoing that the defendant urges that this court has no jurisdiction to handle this matter and the claim ought to have been properly been filed before the Environment and Land Court established under section 5 of the Environment and Land Court Act, No. 19 of 2011.

6. It is contended therefore by the Applicant/Defendant that the Environment and Land Court has therefore jurisdiction to deal with, among other issues, disputes relating to Land administration and management, private land, contracts, instruments granting any enforceable interest in land

7. From the above the issue for consideration is therefore as follows:-

1) Whether this court has jurisdiction to entertain the suit before it?

8. The dispute in this matter as can be ascertained from the plaint dated 17th March 2014 is between the partners/directors and is essentially of commercial nature as it relates to an investment by the parties to the suit in which the prayers sought are for accounts from the proceeds of business, the valuation of the property of business, the plaintiff to be allowed back into the business and payment of due share of the proceeds. On the other hand the 3rd interested party seeks compensation for the infrastructure and loss of business incurred by Olden Limited in which the plaintiff is a director/shareholder.

9. Of great significant in this matter, the court on 2nd December 2014 dealt with an application for injunction, granted orders sought and upto date the defendant Applicant has not challenged the court's ruling on the ground that it lacked jurisdiction to grant such orders. In addition to the above the defendant in his defence admitted that this court has jurisdiction to hear and determine this matter.

10. From the plaintiff's plaint it is clear, that the dispute subject of this suit, is in its entirety business related, it is not, as suggested by the defendant an interest in land. It is not a land dispute in which there is claim for ownership of land. This is purely a commercial related claim for which this court has jurisdiction to deal with. This is not a matter for Environment and Land Court as submitted by the defendant.

11. Section 4 of the Environment and Land Court Act provides:-

"(1) The guiding values and principles of land management and administration in this section bind all State organs, State officers, public officers and all persons whenever any of them—

(a) Enacts, applies or interprets any provisions of this Act; and

(b) Makes or implements public policy decisions.

(2) In the discharge of their functions and exercise of their powers under this Act, the Commission and any State officer or public officer shall be guided by the following values and principles—

(a) Equitable access to land; security of land rights;

(b) Security of land rights;

(c) Sustainable and productive management of land resources;

(d) Transparent and cost effective administration of land;

(e) Conservation and protection of ecologically sensitive areas;

(f) Elimination of gender discrimination in law, customs and practices related to land and property in land;

(g) Encouragement of communities to settle land disputes through recognized local community initiatives;

(h) Participation, accountability and democratic decision making within communities, the public and the Government;

(i) Technical and financial sustainability;

(j) Affording equal opportunities to members of all ethnic groups;

(k) Non-discrimination and protection of the marginalized; and

(l) Democracy, inclusiveness and participation of the people; and

(m) Alternative dispute resolution mechanisms in land dispute handling and management".

12. In view of the foregoing, I find this court is clothed with jurisdiction to entertain the present suit. The defendant's preliminary objection is without subsistence.

13. The upshot is that the preliminary objection dated 16th April 2014 is without merits and is accordingly dismissed with costs to the plaintiff.

Dated, signed and delivered at Nairobi this 17th day of January, 2019.

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J .A. MAKAU

JUDGE