



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 259 OF 2018**

**ANNE LOKIDOR.....APPELLANT**

**VERSUS**

**NAIROBI CITY COUNTY.....RESPONDENT**

*(Being an appeal from the ruling/order delivered on the 5<sup>th</sup> day of June 2018 by the Honourable Chief Magistrate Mr. P.M. Gesora in CMCC 3971 of 2018 Milimani Commercial Courts)*

**RULING**

This is a Notice of Motion filed by the appellant for stay of execution of the ruling delivered by the lower court on 5<sup>th</sup> June, 2018 whereby the respondent's preliminary objection, to the effect that the lower court had no jurisdiction to entertain the appellant's claim, was upheld.

Aggrieved by the decision of the lower court, the appellant filed Memorandum of Appeal dated 6<sup>th</sup> June, 2018. The Notice of Motion cited above is premised on that appeal. Upon service of the application, the respondent filed a Notice of Preliminary Objection dated 22<sup>nd</sup> June, 2018.

The thrust of the objection made under Order 51 Rule 14 (1) (a) of the Civil Procedure Rules is to the effect that, this court does not have jurisdiction to entertain and determine environment and land matters within the purview of Article 162 (2) (b) of the Constitution of Kenya 2010 and Section 13 of the Environment and Land Act No. 19 of 2011.

There is a replying affidavit to the application, and both parties have filed submissions to address the Notice of Preliminary Objection and cited some authorities which I have noted. The genesis of this dispute is contained in the plaint filed on behalf of the appellant on 25<sup>th</sup> April, 2018. After giving the chronology of events leading to the cause of action, the prayers contained in the plaint are as follows,

**“a) This honourable court do issue a permanent injunction restraining the defendant from evicting the plaintiff from INSTITUTIONAL HOUSE NO. 261 LAVINGTON.**

**b) In the alternative, this honourable court orders the defendant to reimburse the plaintiff the renovation and repairs costs incurred.**

**c) Costs and interest of this suit.”**

Article 162 (2) (b) of the Constitution provides as follows,

**“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –**

**(b) The environment and the use and occupation of, and title to, land.”**

Parliament enacted Act No. 19 of 2011 known as Environment and Land Court Act which provides the jurisdiction of the court under Section 13 thereof as follows,

**“13. 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.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.

(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

(5) Deleted by Act No. 12 of 2012, Sch.

(6) Deleted by Act No. 12 of 2012, Sch.

(7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—

(a) Interim or permanent preservation orders including injunctions;

(b) Prerogative orders;

(c) Award of damages;

(d) Compensation;

(e) Specific performance;

(g) Restitution;

(h) Declaration; or

(i) Costs.”

In the celebrated holding by Nyarangi JA in the case of Owners of Motor Vessel “Lilian S” vs. Caltex Oil (Kenya) Limited (1989) KLR 1 it is now accepted in the words of the learned Judge ,

**“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there will be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”**

Citing **“Words and Phrases legally defined”** volume 3: 1 – N page 113, the judgment included in part the following statement,

**“By Jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited.....where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”**

The appellant herein has pleaded in the plaint that she was a tenant in the respondent’s premises. She has acknowledged that the respondent was her land lord receiving monthly rent of Kshs. 35,000/=.

The appellant took possession of the premises by virtue of her then position as a member of County Executive Committee. Her term came to an end and she was requested to vacate the premises to facilitate occupation by another member of staff in the county, and that is the

substratum of the dispute.

I am aware of the decision of the Court of Appeal in the case of **co – operative bank of Kenya Limited vs. Patrick Kagethe Njuguna & 5 others (2017) e KLR** which has been relied upon the appellant herein. The dispute therein centred on the charge that had been created upon the property owned by the respondents. Upon challenge of the jurisdiction of the trial court, the learned Judges held that the High Court had jurisdiction to hear and determine the dispute.

With profound respect, that is not the issue in this case. We are here concerned with the occupation of the suit premises by the appellant and the tenancy between her and the respondent. It is my finding that the tenancy of the appellant in the said premises is covered by the word “**tenure**” and complemented by the payment of rent which she herself acknowledges. “**Tenure**” has been defined in Black’s Law Dictionary as “**a right, term, or mode of holding lands or tenements in subordination to a superior**”. “**Tenement**” is also defined as “**a house or other building used as a residence**”. That brings the dispute under the provisions of Section 13 (2) (a) of the Environment and Land Court Act aforesaid.

Having so found, this court is divested of jurisdiction to hear and determine the dispute herein by virtue of those provisions. That being the case, the preliminary objection succeeds and therefore I decline to address the Notice of Motion dated and filed on 8<sup>th</sup> June, 2018. I direct that this file shall be placed before the Presiding Judge of the Environment and Land Court for appropriate directions on 14<sup>th</sup> November, 2018. The costs shall be in the cause.

*Dated, signed and delivered at Nairobi this 7th day of November, 2018.*

**A. MBOGHOLI MSAGHA**

**JUDGE**