



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**  
**HIGH COURT CIVIL CASE NO. 401 OF 2015**  
**PARAGON ELECTRONICS LIMITED.....PLAINTIFF**  
**VERSUS**  
**VELOS ENTERPRISES LIMITED.....DEFENDANT**  
**RULING**

1. The Defendant by way of a Preliminary Objection dated 6<sup>th</sup> July, 2016 objected to the suit filed herein vide a plaint dated 24<sup>th</sup> November, 2015. The Preliminary Objection is based on the following grounds:-

- “a. That the plaintiff has instituted this suit in a court without jurisdiction to hear and/or determine the issues in dispute herein.**
- b. That the subject matter of this suit is land and the suit ought to be heard and exclusively determined by the courts contemplated by Article 162 (2)(b) of the Constitution of Kenya 2010.**
- c. That this court does not have jurisdiction to transfer the case to any other court in the land on account of want of jurisdiction.”**

2. The Preliminary Objection was canvassed by way of written submissions. The Defendant is of the view that the Constitution under Article 162 (2), has established special courts to deal with environmental and land disputes and that Article 165 (5)(b) expressly provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of courts contemplated in Article 162 (2). In addition to the arguments on the lack of jurisdiction to determine the suit, the Defendant submits further that, this court lacks the jurisdiction to transfer the suit, since from the onset the court is deprived of jurisdiction to entertain the suit. It is also argued that section 18 of the Civil Procedure Act only provides for the power of the High Court to withdraw and transfer cases filed in the subordinate courts.

3. The Plaintiff in response submitted that the Preliminary Objection does not raise a pure point of law since the issue for determination before the court is the computation of damages. It is stated that the Plaintiff seeks computation of damages which the High Court found to be due to the plaintiff in HCCC No. 285/2010. It is argued that the matter before court is not a land matter as alleged by the Defendant. According to the Plaintiff, the land dispute was determined in HCCC 285/2010 in a judgment delivered on 23<sup>rd</sup> October, 2015. The Plaintiff also stated that a Preliminary Objection cannot be raised where there are contested facts as in this case since the facts need to be ascertained. It is contended that the High Court has jurisdiction to compute the aforesaid damages.

4. On the question of this court's jurisdiction, the Court of Appeal stated in **The Owners of Motor Vessel "Lillian s" v Caltex Oil Kenya Ltd [1989] KLR 1** thus:-

**"Jurisdiction is everything. Without it, a court has no power to make one step, where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence and a court of law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction."**

5. Section 13 of the Environmental and Land Court Act provides for Jurisdiction of the court; it reads that:-

**"(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."**

6. The plaint herein prays for judgment against the Defendant as follows:-

**"(a) Damages in the sum of Shs. 70,662,000/= for loss or rent as from February 2010 to October 2015.**

**(b) Exemplary damages**

**(c) Interest on (a) and (b) above at court rates from February 2010 until payment in full.**

**(d) Costs of the suit.**

**(e) any other or further relief that this Honourable Court may deem fit and just to grant"**

7. It is apparent from the plaint that the suit arises out of a breach of contract over a leasehold property known as land Reference No. 209/16027 (Block I C). It is also apparent that the damages claimed herein allegedly arose out of acts of waste committed upon the suit property, thereby causing the Plaintiff loss and damage including damage to its business. The plaint also refers to HCCC No.285/210 between the same parties i.e Velos Enterprises Ltd v Paragon Electronics Ltd wherein judgment was delivered on 23<sup>rd</sup> October, 2015. In the said judgment, the court held that the damages caused to the Plaintiff herein by the Defendant were recoverable but in a separate suit, hence the filing of the suit herein.

8. In their submissions, the Plaintiff's counsel quoted excerpts of the aforesaid judgment and stated that the land dispute between the Plaintiff and the Defendant was determined in the said suit. It is contended that the computation of the damages payable falls within the jurisdiction of the civil division of the High Court. The judgment in HCCC 285/10 has been exhibited herein as part of the Plaintiff's bundle of

documents.

9. I have taken liberty to peruse the said judgment. The said suit was in respect of service charge, vacant possession and mesne profits. The said judgment considered the contract between the parties and arrived at the following holding:-

**“I think the proper cause of action for the Defendant remains in damages for wrongful eviction, wastage and damages including damages for loss of rent, it is clear to this court that the Plaintiff by its acts of blocking the sewerage, cutting off electricity and water and causing damages through its auctioneers occasioned damages to the Defendant which cannot be left unpaid. No person shall be given the liberty to destroy and to plunder and get away with it. The damages which the Plaintiff caused to the Defendant are recoverable even if not in this suit. The Defendant is entitled to quantify that damage from the time of the blockage of the sewerage to the date of this ruling, and to recover the same in a suit filed separately if the time limitation is not yet exhausted. The Report by Topmark Valuers should therefore be used in proof of that claim, except that for the purposes of this judgment this court shall take the monthly rent of the suit premises to be Kshs.1,178,000/= as per the said valuation. This amount shall be payable from the date of this Ruling until the Plaintiff provides the Defendants with a separate title as determined hereunder.”**

10. The plaint also makes reference to the leasehold interest, possession and occupation of the suit premises and the damage caused to the premises through the blockage of the sewerline manhole etc. There is also the question of providing a separate title for the premises. All these issues revolve around title to the land and the leasehold interest and therefore fall squarely within the jurisdiction of the Environment and Land Court.

11. On whether this court has jurisdiction to transfer this case to the Environment and Land Court, this court is bound by the position taken by the Court of Appeal in the case of **David N Mugendi v Kenyatta University & 3 others [2013]eKLR** which was quoted in the case of **Ernest Kevin Luchidio v Attorney General & 2 others [2015] eKLR** which was relied on by the defence. The Court of Appeal stated as follows:

**“.....in endeavouring to meet the ends of justice untrammelled by procedural technicalities, we set aside the order striking out the appellant’s petition and direct that the High Court do transfer it to the Industrial Court which also has jurisdiction and authority to consider the claims of breach of fundamental rights as pertain to industrial and labour relations matters. It is only meet and proper that the Industrial Court do exclusively entertain those matters in that context and with regard to Article 165(5)(b). And in order to do justice, in the event where the High Court, the Industrial Court or the Environment & Land Court comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar/equal status should in the spirit of harmonization, effect the necessary transfers among themselves until such time as the citizenry is well acquainted with the appropriate forum for each kind of claim. However, parties should not file “mixed grill” causes in any court they fancy. This will only delay dispensation of justice.”**

12. With the foregoing, the Preliminary Objection is upheld with costs. The suit is hereby transferred to the Environment and Land Court.

Dated, signed and delivered at Nairobi this 2<sup>nd</sup> day of March,2017

**B.THURANIRA JADEN**

**JUDGE**