



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL APPEAL NO. 101 OF 2014

MARY RONO.....APPELLANT

VERSUS

BEN GATHOGO.....1ST RESPONDENT

JOSEPH KATHENGE T/A DIRECT O. SERVICE AUCTIONEERS.....2ND RESPONDENT

DIRECTIONS

1. The Appeal hereof is against the trial court's ruling delivered on the 10th June 2014 in Nakuru CMCC NO. 557 of 2012.

This was a ruling on the appeal dated 16th October 2013 where she sought an order to set aside an *ex parte* judgment and decree to allow her to be heard on the case.

The application was heard interpartes and the application was dismissed with costs prompting filing of this appeal.

I have looked and considered the cause of action between the parties in the trial court by way of their respective pleadings and affidavits in support of the various affidavits in support of the various affidavits in both the trial court case and in this appeal.

The dispute clearly concerns a relationship between a landlord and a tenant being issues on rent increments and default in rent payments.

2. I have also considered the judgment in the trial case **CMCC No. 557 of 2012 delivered on the 26th August 2013**. This suit in my considered view arose from a judgment in **CMCC NO. 1498 of 2000** and attachment in execution of a decree in the said case.

That being the case, and I believe it is, then, the High Court has no jurisdiction to hear and determine disputes arising from a Land lord-tenant relationship.

3. The **Kenya Constitution 2010 by Article 162 (2) (b)** established a court to hear and determine disputes relating to the Environment and the use and occupation of, and title to land. This is the Environment and Land Court. Under the **Environment and Land Court Act 2011 Section 13**, the said court was donated jurisdiction to hear and determine all disputes emanating from the use and title to land.

Section 13(4) states that the court shall exercise appellate jurisdiction over decisions of subordinate courts and local authorities on matters falling within its jurisdiction. Following therefore, this appeal

therefore falls for determination in the Environment and Land Court. Jurisdiction is everything and anything done by a court or tribunal without jurisdiction is a nullity.

4. The moment that a court realises that it has no jurisdiction it ought to tool down its tools.

This realization came to me on the 24th April 2017 when I was preparing the ruling in the Notice of Motion dated 6th April 2017 parties argued the said application before me on the 20th April 2017 and the ruling was reserved for the 30th May 2017.

5. Earlier on the 6th April 2017, interim orders of stay of execution of the Judgment and decree in **CMCC No. 557 of 2012** were granted to the applicant pending hearing and determination of the application.

In exercise of my inherent discretion under Section 3A of the Civil Procedure Act, I hereby transfer the appeal to the Environment and Land Court for further hearing and determination for reasons that any decisions I may deliver on the Notice of Motion may be declared a nullity.

I direct parties to mention the appeal before the Environment and Land Court to take directions on the furtherance of the Notice of Motion at issue. If parties agreed and the judge is inclined, the submissions as recorded may be adopted or the court may give fresh directions on the hearing of the Notice of Motion dated the 6th April 2017.

In the meantime, the interim orders of stay of execution granted to the applicant on the 6th April 2017 shall remain in force upto the 20th June 2017 when the matter shall be mentioned before the Environment and Land.

Dated, Signed and Delivered this 11th Day of May 2017.

J.N. MULWA

JUDGE