



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO.109 OF 2013

C. DORMAN LTDPLAINTIFF

VERSUS

KENYA RAILWAYS CORPORATIONDEFENDANT

RULING

The plaintiff C. Dorman Ltd instituted this suit on 4th April 2013 against the defendant Kenya Railways Corporation. The plaintiff's claim against the defendant is for

- a. A permanent injunction restraining the defendant from evicting the plaintiff from its property; attaching the plaintiffs property, forcefully obtaining the plaintiff's assets with the intention to sell the same at a public auction or in any other way alienating or destroying the plaintiffs property without an order from the court.

The suit land is LR 10491-LR 209/4248.

- b. A declaration that the plaintiff does not owe the defendant any sums of fees in respect of the suit property.
- c. Costs of the suit.
- d. Any other relief that the court may deem fit and just to grant.

From the prayer No (a) above, it is apparent that the claim by the plaintiff against the defendant is over land.

That being the case, Article 162(2)(b) of the Constitution contemplates the establishment of a specialized court with the same status as the High Court to hear and determine disputes relating to Environment, the use and occupation of, and title to land.

Clause 3 thereof mandates, Parliament to determine the jurisdiction and functions of the said court. In 2011, Parliament enacted the Environment and Land Court Act 2011, establishing under Section 4 thereof the Environment and Land Court. The court, under Section 13(1) and (2) of the Act is vested with jurisdiction as contemplated under Article 162(2) (b) of the Constitution.

Further, among the orders that the court can grant on the exercise of its jurisdiction under the Act are

- a. Interim or permanent preservation orders including injunctions;
- b. Prerogative orders.
- c. Award of damages
- d. Compensation
- e. Specific performance.
- f. Restitution.
- g. Declaration
- h. Costs.

In addition, Article 165(5) (b) of the Constitution expressly ousts the jurisdiction of the High Court from hearing and determining disputes relating environment and land which disputes fall within the jurisdiction of the Environment and Land Court.

It therefore follows that this court has no jurisdiction to hear and determine the dispute herein which relates to ownership/occupation of land.

This court nonetheless appreciates that the dispute was instituted in court in the transitional period albeit after the effective date, and just when the Environment and Land Court was being set up and beginning its work in early 2013.

That being the case, I would not strike out this suit. I would therefore direct that the file be placed before the Environment and Land Court for further directions as to its hearing and disposal.

Orders accordingly.

R.E. ABURILI

JUDGE

12/10/2015