



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO 98 OF 2013

KANGATTA PROPERTIES CO. LIMITED..... PLAINTIFF

VERSUS

1. CHARITY NJERI

(t/a WINACOM CROSSLINE SUPPLIERS)

2. JAMES MWANGI KAGURE

(t/a KAGS TRADING LTD)

3. MOLOLINER NISSAN SACCO

4. RIDGE GRAPHIS LTD

5. ABRAHAM ITABARI KARUTI

(t/a SUNCITY ELECTRICAL AND SALES)

6. JOSEPH GITHUTHU GITARA

(t/a GENTOL ELECTRICAL).....DEFENDANTS

RULING

1. The Plaintiff's suit against the Defendants jointly and severally is for vacant possession of premises leased to them by the Plaintiff. The Plaintiff's case is that the Defendants' leases expired but that they refused or neglected to give vacant possession. *Mesne profits* are also sought.
2. Together with the plaint the Plaintiff filed **notice of motion dated 27th March 2013** seeking the main mandatory order to compel the Defendants to give it vacant possession of the respective premises occupied by them.
3. The Defendants responded to this application by a **notice of preliminary objection dated 3rd April 2013**. The main legal point taken is that this court lacks jurisdiction to entertain the application and indeed the suit.

4. The dispute between the Plaintiffs and the Defendants is a landlord and tenant dispute. In a **considered ruling dated 17th and delivered on 20th September 2013** in the case of **James Moses Thamu & Others –vs- Joseph M Muturi, Nairobi HC (Civil Division) Civil Case No. 171 of 2013 (Unreported)** I held that landlord and tenant disputes are disputes that involve an interest in land, and the High Court no longer has jurisdiction to hear and determine such disputes. In so holding I rendered myself thus –

“Jurisdiction

The Plaintiffs came to this Court because they felt that they were under threat of eviction. They seek injunction to protect their tenancies. It has long been held that this Court has jurisdiction in such cases. The Court of Appeal observed as follows in the case of *Narthidas & Company Ltd – vs – Nyali Nairobi Civil Appeal No. 205 of 1995 [1996] eKLR –*

“What does a controlled tenant confronted with an illegal threat of forcible eviction do? He cannot go to the Business Premises Rent Tribunal established under the Act as that Tribunal has no jurisdiction to issue an injunction or similar remedy against the landlord..

“The learned judge was therefore in our view clearly wrong in holding that the superior court had no jurisdiction to hear the matter before him. There was clearly jurisdiction to deal with the matter.”

But that was before the Constitution of Kenya, 2010 was promulgated. It provides at Article 162(1) & (2) (b) for establishment by Parliament of a court, *inter alia*, with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. At sub-Article (3) of the same Article Parliament shall determine the jurisdiction and functions of such court.

By the Environment and Land Court Act, No 19 of 2011 (which commenced operation on 30th August 2011) Parliament established the *Environment and Land Court*. The jurisdiction of that Court is set out in section 13 of Act No. 19 of 2011. For our purpose subsections (1) and (2) of that section will be sufficient. They provide –

“13. (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 written law 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 relating to environment and land, including disputes –

(a) relating to environmental planning and protection, trade, 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.

That list is not exhaustive, and must be read together with the *Practice Directions on Proceedings relating to the Environment and the Use and Occupation of, and Title to, Land* issued by the Chief Justice vide *Gazette Notice No. 16268 of dated 9th November 2012*. Paragraph No. 12 thereof is relevant. It states –

“12. All new cases relating to the environment and the use and occupation of, and title to, land not falling under paragraph 7 above (Magistrates’ Courts...) shall be filed in the nearest Environment and Land Court for hearing and determination by the said Court.”

It was submitted by learned counsel for the Defendant that a tenancy dispute is a dispute involving an interest in land and ought to go to the *Environment and Land Court*, and that the High Court has no jurisdiction in such matters.

Section 2 of the Land Registration Act, No. 3 of 2012 defines “lease” as follows –

“ ‘lease’ means –

- a. a lease or sublease, whether registered or unregistered, of land; or
- (b) a short-term lease or agreement to lease.”

The *Land Act, No. 6 of 2012* contains a more comprehensive definition of “lease”. This statute which commenced operation on 2nd May 2012 was enacted “to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land based resources, and for connected purposes”.

The statute has application to all public, private and community land (see section 3 thereof).

Under section 2 of Act No. 6 of 2012 –

“ ‘lease’ means the grant, with or without consideration, by the proprietor of land of the right to exclusive possession of his or her land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for lease.”

By this definition a lease, which gives exclusive possession of land or premises to the lessee, is an interest in land. It is not a mere or ordinary contract. It is a grant of an interest in land. A tenancy is by definition a lease.

Landlord and tenant disputes therefore are disputes that involve an interest in land.

Article 165(5) of the Constitution specifically denies the High Court jurisdiction in respect of matters falling within the jurisdiction of the *Environment and Land Court*. By dint of the Constitution and the *Environment and Land Act*, the High Court has no jurisdiction to hear and determine such disputes. I so hold.”

5. This suit is thus in the wrong court. It should be before the *Environment and Land Court*. In this

day and age the proper thing to do is not to strike out the suit but to send it to the right court. The suit is therefore hereby transferred to the *Environment and Land Court* to be dealt with there. Costs of the preliminary objection are awarded to the Defendants. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 2ND DAY OF OCTOBER 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 8TH DAY OF OCTOBER 2013