

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NO. E051 OF 2023

LAWRENCE M.M. KWENJA & 23 OTHERS.....APPELLANTS

-VERSUS-

JLIANCO CONSTRUCTION CO.
LTD.....RESPONDENT

(Being an appeal from orders in the Small Claims Court at Thika (Hon M.W. Kamau RM) claim number E769 of 2023 dated 23rd November 2023)

JUDGMENT

The appellants filed a claim in the small claims court at Thika claiming from the respondent a sum of Kshs 478,000.00, costs of the claim and some 10 per cent interest on the amount and compensation for 50 metres roadworks not yet done and Kshs 150,000.00 for grading and gravelling. According to paragraph 4 of the statement of claim, the basis of the claim was that the respondent approached the appellants for a space to lease for two years for storing culverts and piping at a rent of Kshs 20,000.00 per moth payable every six months.

The respondent filed a response and raised a preliminary objection dated 16th June 2023 to the effect that the court lacked jurisdiction pursuant to Section 13(5) of the Small Claims Court Act (hereinafter referred to as ‘the Act’) as the matter was a dispute over title or possession of land. The respondent also argued that the appellants did not file a consent authorizing the 1st appellant to represent the other appellants in the suit. The trial court heard the preliminary objection and in a ruling

dated 23rd November 2023, it struck out the claim for lack of jurisdiction but did not address the second limb of the preliminary objection which precipitated this appeal.

The memorandum of appeal herein contains 29 repetitive and verbose grounds which in my view can be condensed to two grounds thus; the trial court erred in finding that it did not have jurisdiction and the objection did not qualify as a preliminary objection as it needed calling for evidence and analysis of factual issues.

I have read the undated submissions of the appellant filed on 2-12-2024 which I also find to be exhausting to comprehend. As stated above, I have identified only two issues in this appeal. I choose to begin with the argument that the preliminary objection did not qualify as such.

What is a preliminary objection has been addressed and settled in various judicial authorities. A preliminary objection on a point of law must take the character of ability to dispose the entire suit or claim and should not raise matters which need investigations or interrogation of facts to establish the merits thereof. A preliminary objection must be capable of being handled by looking at the pleadings and the law only and without calling for evidence or facts outside the pleadings of the parties. In ***Independent Electoral & Boundaries Commission v Cheperenger & 2 others (2015) KESC 2 (KLR)***, the Supreme Court of Kenya held that;

‘It is quite clear that a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law.’

The same position was replicated in *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others (2021) KESC 39 (KLR)* where the Supreme Court of Kenya held that;

‘A preliminary objection consisted of a point of law which had been pleaded, or which arose by clear implication out of pleadings, and which if argued as a preliminary point could dispose of the suit.’

The preliminary objection taken before the trial court was on jurisdiction and based on a statutory provision. Having looked at the objection and the cited Section of the Act, it is my finding that it qualified as preliminary objection. All that was need was for the court to look at the statement of claim vis a vis Section 13(5) of the Act which in my opinion was capable of fully disposing the claim.

The second issue is whether the preliminary objection was merited. Paragraph 4 of the statement of claim stated in verbatim as follows;

‘The managers of the companies campsite- premises approached me seeking space to lease for 2 years as their site was flooding and inadequate, hence needed space to temporarily store culverts and piping as they are manufactured and bought enroute to their construction sites. We came to an agreement as a matter of urgency in good faith to make an in road with their graders and put waste gravel.

Also that they would provide us with security lights due to the high pilferage their goods attracted to enhance site safety and surrounding security too.

That they would also give monetary compensation for the 8 plots- 20,000 square feet usage agreed at Kes. 20,000 per month payable every six months.'

Irrespective of the difficulty in the grammar used, I see no other feasible interpretation of the above extract except that the respondent took a lease from the appellants for monthly rent of Kshs 20,000.00. It should not be hard for anyone to understand that there is a landlord/tenant relationship between the appellants and the respondent and the dispute herein is payment of rent or lack of it. That being the case, I hold the view that the matter should have been filed in Environment and Land court or Business Premises Rent Tribunal no matter how the claim was couched in order to appear as debt owed and efforts by the appellant to fit the claim under Section 12 of the Act.

In ***Orange Democratic Movement v Yusuf Ali Mohamed & 5 others (2018) KECA 292 (KLR)***, the Supreme Court of Kenya held that;

'We hasten to add that a party cannot through its pleadings confer jurisdiction to a court when none exists.'

Section 13(5) of the Act provides that;

'A claim shall not be brought before the Court if the cause of action is founded upon defamation, libel, slander, malicious prosecution or is upon a dispute over a title to or possession of land, or employment and labour relations.'

Unless a court is clothed with jurisdiction by the Statutes or the Constitution, it has no mandate to sit over a dispute. Where a Statute has expressly ousted jurisdiction

of specific cases from the court, the obvious and the only interpretation would be that the court lacks jurisdiction to hear and determine such disputes. It is clear from the cited Section that the Small Claims Court has no jurisdiction to entertain an action founded over a title or possession of land. Where the law provides specific tribunal or court for specific disputes, parties have no luxury of choosing a different forum. This position was so emphasised by the Court of Appeal in ***Peter Muturi Njuguna v Kenya Wildlife Service (2017) KECA 42 (KLR)*** when it held that;

‘From the foregoing, it is abundantly clear to us that where there is a specific procedure as to the redress of grievances, the same ought to be strictly followed.’

Consequence to the above analysis, I find no merits in this appeal which is hereby dismissed. Since the respondent did not appear in the appeal or file submissions, I will not make orders as to costs.

Dated, signed and delivered at Nairobi this **14th** day of **November** 2025.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Judgment delivered in presence of the 1st appellant and in absence of the respondent.