



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 65 OF 2017

JOHN BAPTISTS KANGA.....PLAINTIFF/APPELLANT

VERSUS

PATRICK NJIRU.....1ST DEFENDANT/RESPONDENT

KINGPIN AUCTIONEERS.....2ND DEFENDANT/RESPONDENT

RULING

This is a ruling pursuant to a Notice of Preliminary Objection raised at paragraph 6 of the 1st defendant's statement of defence which reads as follows:

“6. The 1st defendant avers that the Honourable Court lacks jurisdiction to hear and determine the suit herein by virtue of the provisions of the Landlord and Tenant Act Cap. 301 of the Laws of Kenya”.

When this matter came up for directions on 17th July 2019 in the presence of Mr. Magee Advocate and in the absence of either the plaintiff or his counsel who was duly notified, the matter was confirmed as ripe for hearing. The Court's attention was also drawn to a Notice of Preliminary Objection at paragraph 6 of the 1st defendant's statement of defence. The Court then directed that the first business of the Court during the hearing was the taking of the said Notice of Preliminary Objection. The matter was then fixed for hearing on 24th October 2019. When the matter came up for hearing on the said date in Court after being satisfied that the plaintiff's counsel was duly served with the hearing notice, the Court directed that a ruling date be taken as Mr. Magee did not wish to file any submissions on the same.

1ST DEFENDANT'S CASE

According to the 1st defendant, the dispute between him and the plaintiff is between a landlord and a tenant which is governed under the provisions of **Cap. 301 Laws of Kenya**. The 1st defendant therefore argued that this Honourable Court is not seized with the requisite jurisdiction to hear and determine the dispute which can best be handled by the Business Premises Rent Tribunal. The 1st defendant from his statement of defence dated 5th June 2017 stated that he bought all the shares in the suit property being Plot No. 159 Wanguru and that he is now the proprietor of the whole plot. The 1st defendant further stated that the Business Premises Rent Tribunal in a ruling delivered on 9th September 2016 vide BPRT No. 125 of 2015 (Embu) declared that the plaintiff is his tenant. That ruling is contained in the 1st defendant's list of documents Item No. 7 dated 14th February 2018. The learned Chairman in his ruling stated as follows:

“..... In the premises and taking into account the submissions of the Advocate of the parties and the provisions of Cap. 301, the tribunal makes the following findings:

- 1. That the tenant herein is a protected tenant within the meaning of Section 2 of Cap. 301 as submitted by the Advocate for the tenant Mr. Mwaniki.***
- 2. That there is no landlord and tenant relationship between the tenant (read John Baptist Kanga) and the respondent herein (read Francis Gacheni Gichuki) the suit premises having been sold to the interested party (read Patrick Njiru).***
- 3. There is a landlord and tenant relationship between the applicant (read John Baptist Kanga) and the interested party (read Patrick Njiru) by operation of law under Section 28 of the Land Registration Act 2012***

The gist of the relationship between the plaintiff and the 1st defendant was clearly explained by the tribunal in the said ruling to the effect that there was no landlord and tenant relationship between the plaintiff who was a tenant of one Francis Gacheri Gichuki before he sold his

shares to the 1st defendant in this case. I agree with the submissions by the 1st respondent that the dispute between the plaintiff and the defendant is a landlord and tenant relationship which is governed under **Cap 301 Laws of Kenya**.

The essence of a Preliminary Objection was defined in the celebrated case of **Mukisa Biscuits Manufacturing Co. Ltd Vs West end Distributors (1969) E.A 696 at page 700** where **Sir Charles Newbold J.A.** held as follows:

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.

I entirely agree with the decision by the learned Judge. In view of the aforesaid and this being a dispute between a landlord and a tenant, I find and hold that the Preliminary Objection has merit and the same is hereby allowed. Consequently, this suit is hereby struck out with costs to the 1st defendant.

READ, DELIVERED and SIGNED in open Court at Kerugoya this 13th day of December, 2019.

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E.C. CHERONO

ELC JUDGE

13TH DECEMBER, 2019

In the presence of:

1. Ms Kiragu holding brief for Mr. Magee for 1st Defendant
2. Plaintiff in person – present
3. Mbogo – Court clerk – present