



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC APPEAL NO. 10 OF 2017**

**INTERCOUNTRIES IMPORTERS**

**AND EXPORTERS LTD.....APPLICANT**

**=VERSUS=**

**TOTAL SECURITY LIMITED & 7 OTHERS.....RESPONDENTS**

***(Being an Appeal from Business Premises Rent Tribunal Reference No. 902 & 903(consolidated) of 2016 at Nairobi given by Mbichi Mboroki Chairman, Business Premises Tribunal on the 10<sup>th</sup> Day of February, 2017.)***

**=BETWEEN=**

**TOTAL SECURITY LIMITED.....1<sup>ST</sup> RESPONDENT**

**LEMOLOK LIMITED.....2<sup>ND</sup> RESPONDENT**

**=VERSUS=**

**TELEPOSTA PENSION SCHEME**

**REGISTERED TRUSTEES & 5 OTHERS....1<sup>ST</sup> RESPONDENTS**

**RULING**

1. The Appellant/applicant filed a Notice of Motion dated 19<sup>th</sup> April 2017, in which it seeks the following orders.

**1) That the Appeal be admitted.**

**2) That this Appeal be heard by the Presiding Judge in High Court Civil Suit No.1400 of 2004 between Teleposta Pension Scheme Registered Trustees and Intercountries Importers and Exporters Limited and others.**

**3) That this Appeal be dispensed with by way of written and oral submissions.**

**4) That the costs of this application be in the cause.**

2. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not oppose prayers 1, 3 and 4 of the Notice of Motion. They are only opposed to prayer 2 of the Notice of Motion which seeks that this Appeal be placed before Lady Justice R.E Ougo who heard **High Court Civil Case No.1400 of 2004** for hearing and determination. In **High Court Civil Suit No.1400 of 2004**, the 3<sup>rd</sup> Respondent had filed a suit against among others the appellant herein which was the 1<sup>st</sup> defendant over ownership of **LR No.209/13238** (Originally **L R 209/2397**). In a judgement delivered on 27<sup>th</sup> July 2016, the Judge found that the suit property belonged to the 1<sup>st</sup> defendant which is now the appellant in this suit.

3. The present Appeal arises from the Ruling of the Chairman of the Business Premises Rent Tribunal delivered on 10<sup>th</sup> February 2017 in which the Chairman of the Tribunal held that **Total Security Limited** and **Lemolok Limited** who had filed references to the Tribunal were protected tenants. The appellant now contends that the High Court Judge who heard **High Court Civil Case No. 1400 of 2004** dealt with

substantial matters in issue and will be best suited to determine this Appeal. The appellant further contends that the leases which are the subject of this Appeal were entered into when the matter before the High Court was still pending delivery of Judgement.

4. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have opposed the appellant's application contending that the Judge who handled *HCCC No.1400 of 2004* is **functus official** and that in view of the Environment and Land Court Act and Gazette Notices issued by the Chief Justice and Rulings of Superior Courts, the Judge has no jurisdiction.

5. I have considered the appellant's application, the opposition thereto by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as well as the submissions by the parties in this matter. There is no doubt that the trial Judge in the High Court is **functus officio**. The matter is already before the Court of Appeal. The High Court Judge cannot handle this Appeal when she has no jurisdiction to handle matters relating to Environment and Land . The Court of Appeal in the case of **Karisa Chengo & Others Vs Republic (2015)eKLR** had occasion to deal with the issue of jurisdiction. This matter later went to the Supreme Court where the Supreme Court upheld the findings of the Court of Appeal.

6. I therefore find that the prayer seeking that this case be placed before *Lady Justice R E Ougo* for hearing has **no merit**. The upshot of this is that the Appellant/Applicant's Notice of Motion dated *19<sup>th</sup> April 2017*, is allowed in terms of prayer **1, 3** and **4** save that the oral submissions in prayer **3** shall be limited to highlighting of written submissions if necessary.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 14<sup>th</sup> day of February ,2018.**

**E.O.OBAGA**

**JUDGE**

In the presence of ;-

Mr Makobu for appellant and for Mr Wandabwa for 1<sup>st</sup> and 2<sup>nd</sup> Respondent

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**