



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC. CASE NO. 1566 OF 2014**

**HUSSEIN ISAAK HASSAN.....1<sup>ST</sup> PLAINTIFF**

**YEBON MEBRAHTU TSADIK.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**MUGUGA INVESTMENT COMPANY LTD.....1<sup>ST</sup> DEFENDANT**

**NUNI GENERAL TRADING COMPANY LTD.....2<sup>ND</sup> DEFENDANT**

**RULING**

Both Defendants have raised a preliminary objection urging that this court does not have jurisdiction and that it is the Business Premises Rent Tribunal which ought to determine this case. The notices of preliminary objection are dated 14/4/2015. The 2<sup>nd</sup> Defendant argues that a lease dated 26/4/2014 was registered on 3/12/2014 in favour of the 2<sup>nd</sup> Defendant. It argues that since the Plaintiff acknowledge receipt of the notice from the 2<sup>nd</sup> Defendant, its lease was converted into periodic tenancies which simply require a notice. The 2<sup>nd</sup> Defendant further argues that the suit ought to be dismissed since court lacks the jurisdiction to transfer it to the Business Premises Rent Tribunal.

On its part, the Plaintiff argues that the High Court has unlimited jurisdiction and that it can determine this matter. Further, the Plaintiff argues that there is a valid lease between the 2<sup>nd</sup> Plaintiff and the 1<sup>st</sup> Defendant which binds both parties. The Plaintiff's advocate urged the court to dismiss the preliminary objection and award its costs.

The 1<sup>st</sup> Plaintiff entered into a lease with the 1<sup>st</sup> Defendant of two shops situated in the premises known as L. R. No. 36/VII in Eastleigh Nairobi. The lease was to run for 6 years with effect from 1/1/2012. The agreement provided that either party may terminate it by giving 3 months' notice. The 2<sup>nd</sup> Plaintiff entered into an agreement with the 1<sup>st</sup> Defendant dated 22/11/2012 for stall numbers 8 and 14 situated in Eastleigh L. R. No. 36/7. The lease was for 6 years but was not registered. Either party could terminate the agreement on giving 3 months' notice of the intention to do so.

Through another lease dated 4/7/2014, the 2<sup>nd</sup> Plaintiff entered into another lease with the 1<sup>st</sup> Defendant for letting of shop numbers 3 and 4 within the same plot.

On 26/11/2014 the 1<sup>st</sup> Defendant entered into another lease with the 2<sup>nd</sup> Defendant over the same premises. The 1<sup>st</sup> Defendant granted the 2<sup>nd</sup> Defendant the premises for 15 years from 1/3/2015 at the agreed rent of Kshs. 1 million as an advance payment. Under the agreement the 2<sup>nd</sup> Defendant was to construct a 5 storeyed shopping mall comprising shops and offices.

The Plaintiffs relied on the case of **Said Majid Said v James Titus Kisia** [2015] eKLR in which Kasango J. while dealing with a similar objection found that the tenant was entitled to approach the court rather than the Business Premises Rent Tribunal because the tribunal has no jurisdiction to entertain the tenant's prayers for declaration and injunction.

The court has considered the matter. In the suit herein, the Plaintiffs seek orders of injunction, general damages and an order directing the Defendants to allow the Plaintiffs to continue in quiet and uninterrupted possession of the shops they leased until the leases expire.

Article 162(2)(b) of the Constitution mandated Parliament to establish courts 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. Parliament enacted the Environment and Land Court Act. Section 13(1) of this Act states that the Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution. Section 13(2) (d) empowers the court to hear and determine disputes relating to environment and land including disputes relating to private land and contracts, choses in actions or other instruments granting any enforceable interests in land. The court exercises appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within its jurisdiction under Section 13(4).

This court has jurisdiction to hear this matter. The Defendants preliminary objections are dismissed with costs to the Plaintiffs.

**Dated and delivered at Nairobi on this 12<sup>th</sup> day of March 2018.**

**K. BOR**

**JUDGE**

Delivered in open court in the presence of: -

Ms. Fundi holding brief for the Plaintiff

Ms. Mugenya holding brief for Mr. Waweru for the 1<sup>st</sup> Defendant

Ms. Mugenya holding brief for Mr. Ondieki for the 2<sup>nd</sup> Defendant

Mr. V. Owuor- Court Assistant