



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MILIMANI**

**ELC NO. 215 OF 2016**

**AFRICAN RURAL MISSION.....PLAINTIFF**

**=VERSUS=**

**METHODIST CHURCH OF KENYA.....DEFENDANT**

**AND**

**ALFRED MAKONGO,**

**LUKE W WANYAMA.....PROPOSED INTERESTED PARTIES/APPLICANTS**

**RULING**

1. There are two applications which were set for ruling. The first one is dated 28<sup>th</sup> June 2017. The Court had directed parties to file written submissions in respect of the two applications. As I was going through the file, I noticed that this is a matter which had been filed at the Business Premises Rent Tribunal as a dispute regarding rent. The case was then transferred to this court by the chairman apparently with the consent of counsel for the parties. The reason for the transfer is that one of the parties was uncomfortable with the chairman handling the matter.

2. When the file was brought to the Environment and land Court it was assigned ELC No215 of 2016. When the matter was placed before me on 21<sup>st</sup> June 2015, Mr Muriuki for the defendant indicated to the court that they had agreed to have this matter consolidated with ELC 215 of 2016. Mr Muriuki further indicated that he wished to file a preliminary objection on jurisdiction. The Court made an order for consolidation and listed the matter for directions on 30<sup>th</sup> June 2017. Mr Muriuki was granted liberty to file his intended preliminary objection.

3. When the matter came up for mention on 30<sup>th</sup> June 2017 the court was informed that an application had been made seeking to enjoin interested parties in the suit. In the meantime Mr Muriuki indicated to court that he had prepared an application which had not been filed. That application was filed and thereafter directions were given that the two applications be disposed of by way of written submissions.

4. A perusal of the file shows that there were no files which were to be consolidated. There is actually one file from the Tribunal which was given an ELC number. This Court lacks jurisdiction to entertain this matter. Jurisdiction is either conferred by the constitution or statute. It can never be conferred by consent of the parties. As was stated by **Nyarangi JA in the case of Owners of the Motor Vessel "Lillian S Vs Caltex Oil (Kenya) Limited (1989) KLR**, jurisdiction is everything. Once a court is of the opinion that it has no jurisdiction, it has to down its tools.

5. I am aware that there is only one chairman of the Tribunal. He should not have readily accepted to transfer the case to this court which does not have original jurisdiction to deal with rent disputes. The record shows that he had handled the matter for some time before the matter was referred here. This court does not have original jurisdiction to hear disputes falling within the jurisdiction of the Tribunal. It has only appellate jurisdiction. This matter is therefore referred back to the Business Premises Rent Tribunal for hearing and disposal. I have made this order returning this file because there are no serious grounds which should have made the chairman to refer this file to this court. The chairman should have taken into account the fact that he is the only chairman and should not have readily accepted parties to agree to transfer this matter to this Court.

It is so ordered.

Dated, Signed and Delivered at **Nairobi** this **12<sup>th</sup>** day of **April 2018**.

**E.O .OBAGA**

**JUDGE**

In the presence of ;-

Mr Mocha for Mr Ocharo for Plaintiff

Court Assistant: Hilda

**E.O .OBAGA**

**JUDGE**