



**Eveready Security Guards Limited v Etseem Energy Limited (Environment & Land
Miscellaneous Case E205 of 2022) [2024] KEELC 1145 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1145 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E205 OF 2022
OA ANGOTE, J
FEBRUARY 29, 2024**

BETWEEN

EVEREADY SECURITY GUARDS LIMITED APPLICANT

AND

ETSEEM ENERGY LIMITED RESPONDENT

RULING

1. This suit was commenced by way of an Originating Notice of Motion dated 24th September, 2022 seeking for the following orders:
 - a. That this honourable court be pleased to withdraw from the Chief Magistrates Court at Nairobi Nairobi Commercial Courts Civil Case No. E3624 of 2022 Esteem Energy Limited vs Eveready Security Guards Company Limited and try it itself.
 - b. That if prayer 3 above is granted, this honourable court be pleased to enjoin the Chief Land Registrar as the 2nd Defendant in the suit to be tried by this Honourable Court.
 - c. That this court be pleased to call for the record of the proceedings before the Chief Magistrates Court at Nairobi in Nairobi Commercial Courts Civil Case No. E3624 of 2022 Esteem Energy Limited vs Eveready Security Guards Company Limited for the purposes of determining the legality of those proceedings therein including issuing in the absence of the Applicant on 13th July and 15th July, 2022 orders which were on 5th September, 2022 used to evict the Applicant from its offices on L.R. No. 209/5924 of which it is and has been registered proprietor since 1997 and on 6th September, 2022 to start demolishing the permanent building housing the said offices and for the purposes of making any orders or giving any directions it considers appropriate to ensure the fair administration of justice including:
 - i. Such orders and direction as undo the consequences of the said interlocutory injunction which on 5th September, 2022 threw the Applicant's management into the



streets; the said management has nowhere to operate; if the Applicant is restored into possession through a mandatory injunction, its management will operate from tents and temporary structures pending hearing and determination of the suit of which the court has jurisdiction.

- ii. Varying directions issued on 20th September, 2022 to entertain a determination of title to land for a suit property which was valued in 2016 at KShs. 40 Million and declining timeously the Applicant's Notice of Motion dated 7th September, 2022 in which it is seeking among others the following orders:-
 3. That this Honourable Court be pleased to restrain the Plaintiff whether by itself, its servants or agents from further demolishing the permanent building standing on L.R. No. 209/5924 until further orders from this Honourable Court.
 4. That this Honourable Court be pleased to restrain the Plaintiff whether by itself, its servants or agents or whatsoever from further demolishing the permanent building standing on L.R. No. 209/5924 pending the hearing and determination of this suit.
 5. That this Honourable Court be pleased to issue a mandatory injunction restoring the Defendant into possession of the said L.R. No. 209/5924 described by the Plaintiff as L.R. No. 209/22665 pending the hearing and determination of this suit.
 6. That this Honourable Court be pleased to strike out this suit with costs to be paid by the firm of Ashioya Mogire & Nkatha Advocates.
 - iii. Obtaining from this Honourable Court such directions as will serve two major purposes immediately, namely:-
 - I. To find a way as to show the said suit property L.R. No. 209/5924 is to be saved from alienation or material alteration pending the hearing and determination of the suit and a way of preserving the business with 808 employees which is carried on the same;
 - II. To fashion a procedure to facilitate the attainment of the goal stated in (I) above whilst providing each party with an opportunity to be heard and to protect its interest.
 - iv. Such orders as will prevent the Chief Land Registrar from abusing the process under Section 105 of the LRA of converting titles from RTA to LRA; in the case before the court he has exercised a power which even the government itself does not have - of depriving private owners their land through a purported conversion where a person other than the proprietor gets a Certificate of Title thereby making Titles to land in the Republic of Kenya worthless.
- d. That the costs of this application be provided for.
2. The Motion was supported by the Affidavit of Lucy Gathoni Wachira, the Managing Director of the Applicant, sworn on 24th September, 2022 where she deponed that the Applicant bought the property in 1997 and has been in occupation until on 5th September, 2022 when an order issued by the Chief



- Magistrate's Court was used to evict it and that the Applicant has faced trauma and hardship from being deprived of the offices of its senior management.
3. It is the Applicant's case that Hon. Edgar Kagoni who has had conduct of the matter since inception issued the orders on 26th July, 2022; that the Respondent with the assistance of the police evicted the Applicant from the property on 5th September, 2022; that the order was made on the basis of a Plaint and Notice of Motion whose Verifying Affidavit and Supporting Affidavit respectively were not commissioned and that the Applicant was never served with the pleadings or application in the suit yet a false Affidavit of Service was filed in court showing that it was served.
 4. According to the Applicant's Director, there is no material upon which any injunction could be granted ex parte; that the Applicant has never had any dealings with the Respondent Company; that the Respondent is now in possession of the land and has commenced demolition of the permanent building which has stood on the suit property for 25 years, and that the Applicant has been forced to litigate whilst it has no place to operate from.
 5. The Applicant's Director averred that this country is governed by the rule of law which has not been observed in this case; that the rule of law grants protection of law when one is injured and remedies thereto; that the Applicant filed a Defence and Counterclaim as well as an application for injunctions seeking the prayers set out at paragraph 1(e)(ii) above and that prayer 3 was granted and the application fixed for hearing on 20th September, 2022.
 6. It is the Applicant's case that on the said date, the application was not heard as the Respondent sought time to file responses; that however, the court issued directions one of which was that status quo be maintained; that the Respondent then changed Advocates and served the Applicant with the pleadings and a Certificate of Title purportedly acquired on 21st March, 2022 and that the Applicant has lost faith in the Chief Magistrate's Court and alleges existence of corrupt officials.
 7. The Applicant's Director further deponed that the orders given on 20th September, 2022 did not seek to protect the subject matter or the integrity of the court, neither did they provide an expedited hearing of the Applicant's Motion dated 7th September, 2022; that the orders of 26th July, 2022 vested the suit property in the Respondent, giving it all it wanted in the suit before the Applicant was heard and that it is now clear that a person other than the Applicant, who did not have the title in the first place, converted the Applicant's title to the suit property and was issued with a new title thereto, which scheme was contrived through corruption.
 8. The Motion was opposed through Grounds of Opposition, in which it was averred that the Motion as drawn is incompetent, frivolous vexatious, an abuse of the process of the court and ought to be dismissed with costs; that the Applicant failed to comply with the mandatory provisions of the law before instituting the same and that the orders sought are intended to annoy this Honourable Court.
 9. The Respondent also filed a Replying Affidavit sworn on 12th October, 2022 by Hassan Ibrahim Issak, who averred that if dissatisfied with the orders of 20th September, 2022, the Applicant was at liberty to file an appeal or review thereof; that this court has no power to withdraw the suit in the lower court since the lower court has jurisdiction to deal with the issues raised and that this court has no power to join parties unless properly moved.
 10. The Respondent deponed that in its Plaint, it sought for eviction orders, a permanent injunction and damages for trespass; that under Section 26(4)(a) of the *Environment and Land Court Act*, the lower court has jurisdiction to hear the suit as filed and that no substantial order can be made under a Miscellaneous Application for want of jurisdiction as a matter of law and procedure.



11. It is the Respondent's case that the application is not properly before the court because it calls upon the court to examine the proceedings in the lower court; that the application is an appeal in disguise; that the Motion seeks to review or vary the orders of the lower court without following due process and that further by this Motion, the Applicant is seeking a mandatory order through the back door.
12. It was argued by the Respondent that the Applicant submitted to the jurisdiction of the trial court in his Defence and Counterclaim; that the Applicant served the Respondent with documents on 20th September, 2022 hence the matter was not heard as the Respondent needed time to respond to the pleadings served and that the directions issued on the said date were to assist the court to establish the status of the property, and both parties were heard before the directions were issued.
13. In response, the Applicant filed two Further Affidavits sworn by its Director, in which she deponed that the Applicant is and has always been the registered proprietor of the suit property; that the records show that it is still the registered proprietor of the suit property and that the Land Registrar has set the record straight as to who is the legal owner of the suit property.
14. The Motion was canvassed by way of written submissions. The Applicant submitted that the property is valued at over KShs. 40,000,000/- and consequently the orders of the Chief Magistrate's Court were illegal; that the lower court trivialised the Applicant's ownership of the property and that under Section 7 of the Magistrates Court Act, the jurisdiction of the Chief Magistrate's Court is capped at KShs. 20 Million.
15. It was submitted that the property herein was valued at Kshs. 40 Million in the year 2016, which fact was brought to the attention of the court through a valuation report filed therein, which fact was not denied and that consequently, the Chief Magistrate's Court had no jurisdiction over the matter, and that all orders made by it are null and void.
16. It was submitted that the Land Registrar ought to be joined to this suit; that in Civil Appeal No. 156 of 2013, Elizabeth Wambui Githinji & 28 Others vs Kenya Urban Roads Authority, the Court of Appeal held that the Land Registrar is the custodian of all land documents and that the Respondent purports to have received a converted title without conversion of the Applicant's title and without presentation of a transfer.
17. Counsel submitted that the Plaint in the lower court was signed by the firm of Ashioya, Mogire & Nkatha Advocate and the Verifying Affidavit was not commissioned; that the Supporting Affidavit to the Notice of Motion dated 13th July, 2022 is also not commissioned; that the Applicant pointed out the issue of the un-commissioned Affidavits to the court in its Defence and Counterclaim; that an un-commissioned affidavit is invalid and must be expunged from the record and that further, in the Plaint, the Applicant is described as an adult male of African descent yet it is a company.
18. The Respondent filed its submissions dated 12th October, 2023. Counsel submitted that the court has no power to withdraw a suit in the lower court; that the lower court has jurisdiction to hear and determine suits on merit; that this Honourable Court's jurisdiction flows from Article 162 (2) of the Constitution and Section 13 of the Environment and Land Court Act; that the Applicant seeks to invoke the Court's jurisdiction under Section 18 of the Civil Procedure Act and Article 165 (6) and (7) of the Constitution which vests supervisory jurisdiction on the High Court.
19. It was submitted that the supervisory jurisdiction of the ELC was provided for under Section 13 (5) of the Environment Act, but the Act was amended and that power was taken away; that the said amendment has not been declared unconstitutional or rescinded; that the court cannot purport to assume a supervisory jurisdiction that it has not been bestowed with; and that the Applicant cannot



also invoke Section 18 of the [Civil Procedure Act](#) as it is only available to the High Court through Article 165.

20. It was submitted by the Respondent's counsel that Milimani Chief Magistrates Court has jurisdiction to hear issues related to land under Section 26 (3) of the ELC Act and that since the suit is purely an issue of trespass, then the Chief Magistrate's Court Milimani Commercial Courts is clothed with the requisite jurisdiction to hear and determine the matter.

Analysis and Determination

21. This court has considered the Motion herein, the Affidavits filed in support of and opposition and annexures thereto as well as the submissions of the parties. The following issues arise for determination:
- a. Whether this court has supervisory jurisdiction over magistrate's court gazetted to handle land matters?
 - b. Whether Nairobi Commercial Courts Civil Case No. E3624 of 2022 Esteem Energy Limited vs Eveready Security Guards Company Limited should be transferred to this Court for hearing and final determination?
 - c. Whether the court has power to order joinder of the Land Registrar in the suit?
 - d. Whether this court should grant a mandatory injunction?
 - e. What orders can this court issue in the circumstances?
22. The Respondent herein filed Nairobi Commercial Courts Civil Case No. E3624 of 2022 Esteem Energy Limited vs Eveready Security Guards Company Limited in the Chief Magistrate's Court accusing the Applicant of trespassing into its land known as L.R. No. 209/22665. The Respondent sought an eviction order against the Applicant, a permanent injunction barring the Applicant from trespassing into the property as well as damages for trespass and costs of the suit.
23. Together with the Plaint, the Respondent filed a Notice of Motion application dated 13th July, 2022 for interlocutory orders against the Applicant which was allowed pending hearing and determination of the suit. The order reads as follows:
- “(a) That an order be and is hereby issued restraining the Defendant whether by himself, agents, servants or otherwise howsoever from entering upon, remaining upon, dumping, offering security, trespassing, alienating, leasing, putting up public notices or otherwise interfering with the Plaintiff's quiet possession of Land Reference No. 209/22665 pending hearing and determination of the suit.”
24. The Applicant avers that on 5th September, 2022 the order was used to evict the Applicant from the suit property which it has owned and occupied since 1997, operating its business therefrom and that having been evicted from the suit property without being heard, he perused the court file and found that the said order was issued pursuant to a Plaint verified by an un-commissioned Affidavit and a Notice of Motion whose supporting Affidavit was not commissioned.
25. It is the Applicant's case is that it filed a separate application in the lower court challenging the orders of the court; that the court made orders which did not address the issues raised in his application; that one of the issues raised was that the court had no jurisdiction to hear the matter for the reason that the property was in November, 2016 valued at KShs. 40 Million, and that he annexed the valuation report prepared by Tuliflocks Valuers Limited.



26. The Respondent has questioned the supervisory jurisdiction of this court to as provided under Article 165 (6) and (7) which provide that:-

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

27. According to the Respondent, the Environment and Land Court has no supervisory jurisdiction; that while the Court was vested with supervisory jurisdiction under Section 13(5) of the *Environment and Land Court Act*, the provision was deleted by the Statute (Miscellaneous) Amendment Act, 2012 and that since this amendment has not been declared unconstitutional or rescinded, as matters stand, this court has no supervisory jurisdiction over the subordinate court.

28. This court has had occasion to deliberate on this issue in the case of Lariak Properties Limited vs Metro Pharmaceuticals Limited (Environment & Land Miscellaneous Case E19 of 2022) [2022] KEELC 15000 (KLR) (25 November 2022) (Ruling), a matter very ominously similar to the current one. In that case, this court relied on the case of Gallagher vs Gallagher, 212 So 2d 281,283(La Ct App 1968), where the term supervisory jurisdiction was defined in the following terms;

“Supervisory jurisdiction refers to the power of superior courts of general superintendence over all subordinate courts. Through supervisory jurisdiction, superior courts aim to keep subordinate courts within their prescribed sphere, and prevent usurpation. In order to exercise such control, the power is conferred on superior courts to issue the necessary and appropriate writs.”

29. Arising from this definition, the court then went ahead to answer the question whether a superior court such as this one can exist without supervisory power over the subordinate courts and tribunals, especially those gazetted to deal with environment and land matters which fall directly into the purview of the court. The court held as follows:

“36. Article 165 of *the Constitution* lays down the general jurisdiction of the High Court. Article 165 (5) of *the Constitution* provides that the High Court shall not have jurisdiction in respect to matters falling within the jurisdiction contemplated in Article 162 (2).

37. As succinctly espoused by Majanja J in United States International University vs Attorney General Nairobi Petition No 170 of 2012(eKLR), the jurisdiction bestowed upon the High Court under Article 165 (3) is not absolute but ‘subject to clause (5)’ whose provisions forbid the High Court from exercising jurisdiction over matters falling within the province of the Supreme Court and the specialized courts established under Article 162(2).

38. In the United States International University case (supra), the court observed that the jurisdiction of the specialized Courts is to be determined from a textual consideration of the provisions governing the judicature. The court observed



that the High Court cannot exercise jurisdiction in matters reserved for courts of equal status contemplated under Article 162(2) of *the Constitution*.”

30. If the High Court cannot exercise supervisory jurisdiction over matters reserved for courts created under Article 162 (2), then who can? Are the subordinate courts dealing with such matters left to their own devices, to act as they see fit with no superior court to ensure that their actions are done within the law? I don't think so.
31. It should be noted also, that when parliament deleted Section 13(5) of the *Environment and Land Court Act* through Statute (Miscellaneous) Amendment Act, 2012, the Magistrate's Court still had not been vested with jurisdiction over environment and land matters. At that point in time, it can be argued that the supervisory jurisdiction was unnecessary because there was no subordinate court to supervise per se.
32. All this changed in 2015 when Parliament decided it was wise to vest magistrate's court with jurisdiction over matters falling within the jurisdiction of this court. This was done through Section 25 of the Magistrates' Court Act of 2015 which amended Section 26 of the *Environment and Land Court Act* which allowed the Chief Justice to gazette magistrates' court to hear environment and land matters. The new Section 25 of the Magistrates' Court Act reads as follows:-

“ 25. Amendment of section 26 of Act No. 19 of 2011

Section 26 of the *Environment and Land Court Act* (No. 19 of 2011) is amended by inserting the following subsections immediately after subsection

(2) —

(3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.

(4) Appeals on matters from the designated magistrate's courts shall lie with the Environment and Land Court.”

33. Since the law makers found it wise to vest the appellate jurisdiction on this court, it is only logical that the lower courts in as far as environment and land matters are concerned, fall under the supervision of this court. The Court in the Lariak Properties case (supra) went further to state as follows:-

“As a superior Court, this Court has appellate jurisdiction over the Magistrates who have been gazetted to handle land matters as well as multiple Tribunals including the National Environment Tribunal, the Business Premises and Rents Tribunal, Water Tribunal and the Cooperatives Tribunal.

42. Taking into account the Applicants' arguments, are we then to say that when these subordinate courts and Tribunals, which are answerable to the ELC on appeal, step outside their mandate, it is the High Court that has the jurisdiction by dint of Article 165 (6) and (7) of *the Constitution* to intervene? From the exposition in the USIU case and the provision of Article 165 (5) of *the Constitution*, the answer is a resounding no! What then becomes of these Courts and Tribunals? Are they left unchecked?”

34. This supervision is especially necessary in a case such as this one where it has been alleged that the subordinate court acted without pecuniary jurisdiction.



35. This court has taken time to go through the bundle of pleadings filed in the lower court, copies of which have been annexed on the application. It is true that the Applicant filed a valuation report dated November, 2016 wherein the suit property is valued at KShs. 40 Million. Land typically appreciates in value, and going by this assumption, it is reasonable to state that as at the time the suit was instituted in 2022, the value of the suit property had risen to an amount above the one indicated in the valuation report.
36. That being the case, and considering that under Section 7 of the Magistrate’s Court Act, the pecuniary jurisdiction of magistrate’s court in civil matters is capped at KShs. 20,000,000, the only conclusion that can be drawn is that the subordinate court had no jurisdiction to handle the suit before it. It matters not that the main issue before the court was for trespass.
37. Since there is a set limit to the pecuniary jurisdiction of the Chief Magistrates’ court, and the value of the subject matter does exceed the amount of KShs. 20 Million, the moment the court was informed of the value of the suit property, it ought to have come to the conclusion that it had no jurisdiction to handle the suit and should have downed its tools.
38. Would this court in such a case then have no supervisory jurisdiction over such a matter? Should it fold its hands and allow such an injustice and a miscarriage of justice to continue? The answer again is, no, and reliance is placed on the case of Joyce Mutindi Muthama & Another vs Josephat Kyololo Wambua & 2 Others [2018] eKLR, where it was held as follows:
- “If the court has the jurisdiction to exercise appellate jurisdiction over the decisions of subordinate courts and tribunals, and considering that the court has the same constitutional status as the High Court, it follows that the court has a supervisory role over such subordinate courts and tribunals. It does not matter that the law does not expressly state so, or that the provision of the law stating that the court has such a supervisory role was deleted by Act No 12 of 2012.”
39. This Court in the Lariak Properties Case (supra) concluded the issue of supervisory jurisdiction as follows:-
- “*The Constitution* having granted this court the status of the High Court in matters relating to Environment and land, and without resorting to tabulated legalism, it follows that powers of the High Court to supervise subordinate courts under them applies mutatis mutandis to this court, but limited to environment and land disputes.”
40. On this issue, this court is still of the view that for purposes of proper administration of justice, the Environment and Land Court has supervisory jurisdiction over the Magistrate’s Court and Tribunals in respect of matters falling within its jurisdiction.
41. The next issue to deal with is whether Nairobi Commercial Courts Civil Case No. E3624 of 2022 Esteem Energy Limited vs Eveready Security Guards Company Limited should be transferred to this Court for hearing and final determination.
42. Section 18 of the *Civil Procedure Act*, provides as follows:
- “18. Power of High Court to withdraw and transfer case instituted in subordinate court
- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or



of its own motion without such notice, the High Court may at any stage—

- (a) ... or
- (b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
 - (i) try or dispose of the same; or
 - (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.

- (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”

43. In the Lariak Properties Case (supra), the court having withdrawn a suit from the lower court to be tried in the Environment and land Court, held thus:-

“However, in this matter, I have shown that this court exercised its supervisory jurisdiction over the magistrates’ court by transmitting the suit from the Magistrates’ court and to dispose of the same, as provided for under Section 18(1) (b) (i) of the [Civil Procedure Act](#).”

44. From a reading of Section 18 which is cited above, it grants the High Court (and this court, being a court of equal status as the High Court) the power to withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter try or dispose of the same. The Applicant has sought for the withdrawal of the aforementioned suit from the Milimani Chief Magistrate’s Court to this Court for trial.

45. The party seeking a withdrawal of the case from the subordinate court herein is the Defendant, who although raised the issue of jurisdiction before the magistrate’s court, the issue was never addressed. Since the suit is still alive in the subordinate court, and the Applicant herein being not in a position to withdraw it, having been sued as the Defendant, this court has every right to exercise its supervisory jurisdiction and rectify the obvious wrongs being committed.

46. Allowing the suit to be heard in a court lacking jurisdiction is tantamount to sanctifying an incompetent suit. This court is guided by the Overriding Objectives and the withdrawal and transferring the suit to this court is aimed at facilitating the just, expeditious, proportionate and affordable resolution of the civil disputes governed by Article 159 of [the Constitution](#) as well as the [Civil Procedure Act](#).

47. This court will not go into the issue of the competency of the suit and joinder of the parties as prayed by the Applicant. I say so because these are issues that can only be dealt with once the entire file from the lower court is before this court for hearing and determination.



48. This court has noted the submissions of the parties with regards to the prayer seeking a mandatory injunction. This prayer is embodied at Prayer 5 of the Originating Notice of Motion. The test whether to grant a mandatory injunction or not is correctly stated in Vol. 24 Halsbury's Laws of England 4th Edn. para 948 which reads:

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff...a mandatory injunction will be granted on an interlocutory application.”

49. This court agrees and is further guided by the decision in the famous case of *Locabail International Finance Ltd. vs Agroexport & Others* [1986] 1 All ER 901 at pg. 901 it was stated:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

50. The prayer for mandatory injunction should be seen within the lenses of prayer number 5 of the application which reads as follows:

“That this court be pleased to call for the record of the proceedings before the Chief Magistrates Court at Nairobi in Nairobi Commercial Courts Civil Case No. E3624 of 2022 *Esteem Energy Limited vs Eveready Security Guards Company Limited* for the purposes of determining the legality of those proceedings therein including issuing in the absence of the Applicant on 13th July and 15th July, 2022 orders which were on 5th September, 2022 used to evict the Applicant from its offices on L.R. No. 209/5924 of which it is and has been registered proprietor since 1997 and on 6th September, 2022 to start demolishing the permanent building housing the said offices and for the purposes of making any orders or giving any directions it considers appropriate to ensure the fair administration of justice...”

51. The Applicant then goes on to list a number of expected interventions from this court. It is clear that these expected interventions are all dependent on the court first withdrawing the suit from the subordinate court for trial in this court.

52. That being the case, not having had the advantage of actually going through the said proceedings and record of the subordinate court, the court will be remiss to issue those orders at this stage. Reason dictates therefore, that this court first withdraw and recall the file for consideration before it moves to issue a mandatory injunction or make any further orders with respect to occupation of the suit property pending hearing and determination of the suit.

53. In the circumstances, this court do hereby make the following orders, that:-



- a. This court withdraws from the Chief Magistrates Court at Nairobi, in Nairobi Commercial Courts Civil Case No. E3624 of 2022, Esteem Energy Limited vs Eveready Security Guards Company Limited and try it itself.
- b. The court shall issue directions on the remaining prayers upon consideration of the record and/or proceedings of the Chief Magistrate's Court in Nairobi Commercial Courts Civil Case No. E3624 of 2022 Esteem Energy Limited vs Eveready Security Guards Company Limited.
- c. The costs of the application shall be in the course.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 29TH DAY OF FEBRUARY, 2024.

O. A. Angote

Judge

In the presence of;

Mr. Mwenda for Kuria (S.C) for Applicant

Mr. Shikanda for Osundwa for Respondents

Court Assistant -Tracy

