



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwangi v Githei (Civil Case E035 of 2023)  
[2024] KEELC 1171 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1171 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
CIVIL CASE E035 OF 2023  
JA MOGENI, J  
FEBRUARY 29, 2024**

**BETWEEN**

**JOSEPH GITHINJI MWANGI ..... PLAINTIFF**

**AND**

**NG'ANG'A GITHEI ..... DEFENDANT**

**RULING**

1. Before me for determination is the Notice of Preliminary Objection dated 31/10/2023 by the Respondent which seeks to strike out the Appellant's Application dated 24/10/2023 on the following grounds:
  1. That this Honorable Court does not have the requisite jurisdiction over the property.
  2. That the entire suit is bad in law, misconceived, and discloses no reasonable cause of action as against the defendant thus rendering it fatally and incurably defective.
  3. That the suit is barred in law, incompetent and an abuse of the court process.
  4. That the suit does not expressly disclose any infringement of the fundamental rights of the plaintiff.
2. The Applicant filed the Notice of Motion under Certificate of Urgency dated 24/10/2023 pursuant to Article 43 (1)(b) of the Constitution of Kenya and Rent Restriction Act Cap 296 of the Laws of Kenya and all other enabling provisions of law seeking the following Orders:
  1. Spent.
  2. That pending hearing and determination of the suit the Applicant prays for this court staying the execution of the judgment issued under Case Number E377 of 2022, which permits the eviction of the Applicant from the suit premises on or after the 6th day of November 2023.



This stay of execution is sought to prevent irreparable harm and uphold the rights and interests of the Applicant.

3. That this Honourable court does grant orders restraining the defendants, their servants, employees, and/or agents from evicting, disconnecting water and electricity, harassing the plaintiff/tenant, and/or in any other manner interfering with tenancy pending the hearing of the application inter partes.
  4. That the honorable Court does grant orders restraining the defendants, their servants, employees, and/or agents from disconnecting water and electricity, pending the hearing and determination of this suit.
  5. That the honorable court be pleased to grant any other order deemed fit to grant.
  6. That the Officer in Charge of the Ruiru Police Station ensures compliance with these orders.
  7. That the costs of this application be provided for by the defendant.
3. The Application is premised on the grounds cited at the foot of the Application and it is further grounded on the Supporting Affidavit of Joseph Githinji Mwangi, the Applicant herein, sworn on 24/10/2023.
  4. Briefly, it is the Applicant/Tenant's case that the Defendant/Landlord, after the Ruling in the Rent Restriction Case No. 377 of 2022 the plaintiff/applicant was ordered to vacate the suit premises and he contends that that order of vacating the suit premises will cause him severe prejudice to his rights and interests.
  5. It is the applicant/tenant's contention that he does not owe rent and has no outstanding arrears which was the subject of Cause No. 377 of 2022. He therefore seeks stay of the said orders since he intends to file an appeal against these orders.
  6. Further that that the decision made through Cause No. E377 of 2022 would disrupt the education of his children who are enrolled in education institutions within the subject premises.
  7. The applicant/tenant filed a plaint together with the Notice of Motion both dated 24/10/2023. However, before the application could be heard the defendant/Landlord filed preliminary objection dated 31/10/2023 together with a replying affidavit dated 31/10/2023. The Preliminary Objection is based on the four grounds stated above. The gist of the preliminary objection is that the honorable court does not have jurisdiction and that the entire suit is misconceived and bad in law.
  8. In the replying affidavit the defendant/landlord opposes the application and suit and states that the applicant/tenant was issued with a judgment in the RRT Case No. 337 of 2022 where the applicant was ordered to vacate the suit premises by November 2023 and in default the defendant/landlord was at liberty to execute.
  9. The defendant/landlord also filed a statement of defence to plaint dated 31/10/2023 and in it the defendant argued that the Rent Restriction Tribunal had pronounced a judgment against the applicant herein and he informed the court that he would raise a preliminary objection with respect to the application and the suit filed via plaint dated 24/10/2023
  10. The application was canvassed by way of written submissions.
  11. I have considered the preliminary objection, the written submissions filed on behalf of the parties and the authorities cited. The issue for determination is whether the preliminary objection is merited.



12. The case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* [1969] EA 696 has been the watershed as to what constitutes preliminary objections. The Court of Appeal in *Nitin Properties Ltd v Singh Kalsi & another* [1995] eKLR also pellucidly captured the legal principle when it stated as follows:
- “...A Preliminary Objection raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”
13. This statement of the law has been echoed time and again by the courts: see for example, *Oraro -v- Mbaja* [2007] KLR 141.
14. In the case of *Hassan Ali Jobo & another -v- Suleiman Said Shabal & 2 Others* SCK Petition No. 10 of 2013 [2014] eKLR the Supreme Court stated that
- “... a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit”.
15. I am of the considered view that since this matter is yet to be heard, the defendant/respondent is within the law to raise a Preliminary Objection challenging the jurisdiction of this court. It is my finding that the Preliminary Objection raised one on pure point of law that this court needs to determine.
16. I therefore need to consider whether this court has jurisdiction to determine the suit filed before it. The defendant/landlord has raised an issue of jurisdiction of this Court and so I am obligated to deal with that issue because without jurisdiction I cannot handle any matter before me.
17. In the often quoted case of *Owners of the Motor Vessel “Lilian S” vs. Caltex Oil (Kenya) Limited* [1989] KLR 1 Nyarangi, JA expressed himself as follows:
- “Where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given...Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.
18. Article 162(2)(b) of the *Constitution* states that this Court shall have jurisdiction over disputes relating to the environment, the use and occupation of, and title to land. In addition, Section 13 of the *Environment and Land Court Act* expounds on the jurisdiction of this Court as follows:
- “(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the *Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of the *Constitution*, the Court shall have power to hear and determine disputes—



- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.”

19. In the instant suit the defendant/landlord has based his Preliminary Objection on the ground that this court lacks jurisdiction to hear and determine the plaintiff’s suit. The issue of jurisdiction is a pure point of law which can determine the matter without having to consider the merits of the case. It will not matter whether the facts of the plaintiff’s case as outlined are true or not because without Jurisdiction this court will not have any powers to determine the case. This is because in any litigation, jurisdiction is central.

20. As I have already stated, a court of law cannot validly take any step without jurisdiction. The moment a party in a suit successfully challenges the jurisdiction of the court, the said court must down its tools. The Supreme Court *in the Matter of Interim Independent Electoral Commission* [2011] eKLR held as follows:

Assumption of jurisdiction by Courts in Kenya is a subject regulated by the *Constitution*, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in *Owners of Motor Vessel ‘Lillian S’ v. Caltex Oil (Kenya) Limited* [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.”

30. The *Lillian ‘S’ case* establishes that jurisdiction flows from the law, and the Recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavors to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the *Constitution*.

21. In the instant matter the plaintiff/tenant argued that the Preliminary Objection does not address issues of jurisdiction since this court is the custodian of jurisdiction and therefore the court should go ahead and address merits of the case/suit.

22. The question that strikes my mind is whether this court can proceed to entertain a matter in which it has no jurisdiction for reasons that the court has the responsibility to dispense justice. Without any doubt



the answer to this question is in the negative. The issue of jurisdiction is key since without jurisdiction a court has no powers to proceed to entertain the matter and it has to down its tools.

23. It is common ground that the jurisdiction of this court is set out under Article 162(2) as read together with Section 13 of the ELC Act, 2011 and that the same relates to the use occupation and title to land. However, what is in dispute is whether this court can preside over a matter that was heard and determined in a subordinate court in this case in the Rent Restriction Tribunal.
24. The Environment and Land Court only acts as an appellate court at section 15 of the Act to hear appeals from decisions of the tribunal. Hence the Environment and Land Court is not a court of first instance in matters dealing with controlled tenancy but purely as an appellate court. The case before this court is not an appeal but an initial case hence this court lacks jurisdiction to rehear a matter already heard and determined.
25. The supreme court also rendered itself on this issue in the case of Samuel Kamau Macharia & Ano. Vs KCB \* 2 Others Supreme Court Civil Application no. 2 of 2011 that a court's jurisdiction flows from either the Constitution or legislation or both. In this case, since the issues raised by the plaintiff/tenant in the plaint filed are the same issues deliberated by the Rent Restriction Tribunal and the Chairman pronounced himself on 6/09/2023. The plaintiff/applicant was ordered to vacate the suit property the only other way the plaintiff/applicant would have approached this court is via an appeal. Not through filing of a fresh matter on the same issue as was done via the plaint and application dated 24/10/2024.
26. I am therefore persuaded by the averment of the defendant that the court finds that it lacks the statutory jurisdiction to hear this case and proceeds to strike out the suit with costs to the Defendant.
27. The objection is upheld and this suit is struck out with costs to the defendant.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF FEBRUARY 2024.**

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**MOGENI J**

**JUDGE**

In the virtual presence of: -

Mr . Upendo holding brief for Ms. Mwangi for the Applicant

None appearance for the Defendant/Landlord

Ms. C. Sagina: Court Assistant

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**MOGENI J**

**JUDGE**

