



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION

ELC. MISC. CASE NO. 45 OF 2014

COLOMBIA DEVELOPERS LIMITEDPLAINTIFF/APPLICANT

VERSUS

THE CHAIRMAN,

PARKLANDS SPORTS CLUB.....DEFENDANT/RESPONDENT

RULING

Coming up before me for determination is the Preliminary Objection dated 20th February 2014 filed by the Defendant/Respondent on the following grounds:

1. The Application is hopelessly incompetent, fatally defective and inadmissible and the same ought to be dismissed forthwith.
2. This Honorable court has no jurisdiction to entertain this matter as presently instituted.
3. There is no competent suit before this Honorable court.

At the heart of this dispute is a contract awarded to the Plaintiff by the Parklands Sports Club to expand and refurbish changing rooms and the entry reception at the said club. It would appear that the execution of the works by the Plaintiff did not please the said club resulting in the withholding of payments in respect thereof. This prompted the Plaintiff to file this miscellaneous application seeking orders of temporary injunction restraining the Defendant from continuing to use the facilities until the requisite payments are made pending the hearing and determination of the application as well as the arbitration proceedings commenced by the Plaintiff.

The first issue set out in the Preliminary Objection which I shall address is the question whether this court has jurisdiction to hear and determine this matter. The question of a Court's jurisdiction or otherwise is the beginning and the end of any matter as stated by Nyarangi JA (as he then was) in **The Owners of Motor Vessel "Lillian S" versus Caltex Oil Kenya Limited (1989) KLR** as follows:

"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".

Does the ELC have jurisdiction to hear this dispute? Article 162(2) of the Constitution provides that

Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to the environment and use and occupation of, and title to land. Article 162(3) provides that Parliament shall determine the jurisdiction and functions of the Courts contemplated in Article 162(2). It was on the basis of this provision that Parliament enacted the Environment and Land Court Act, No. 19 of 2011, which came into effect on 30th August 2011. The object of the Act is stated as follows:

“An Act of Parliament to give effect to Article 162(2)(b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to land, and to make provision for its jurisdiction, functions and powers, and for connected purposes”

The nature of the dispute before me is, as stated above, a dispute relating to an Agreement entered into between the Plaintiff and the Parklands Sports Club for the renovation of various parts of the said Club. The Plaintiff has decried the breach of that contract by the said Club and seeks to enforce the same through arbitration proceedings. Clearly, this matter does not fall within the jurisdiction of this court which is primarily involved with disputes relating to ownership of land and of course suits relating to the environment. Accordingly, I am of the view that this matter should be transferred to the Commercial and Admiralty Division for consideration of the other two points raised in this Preliminary Objection.

I therefore direct that this file be placed before the Presiding Judge of the Commercial and Admiralty Division for his further necessary action.

It is so ordered.

DELIVERED AND SIGNED AT NAIROBI THIS 2ND

DAY OF MAY 2014.

MARY M. GITUMBI

JUDGE