



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KIHARA KARIUKI (PCA), MWILU & KANTAI, JJ.A)

CIVIL APPLICATION NO. NAI. 241 OF 2015 (UR 200/2015)

BETWEEN

GIBSON M. MUNYIRI.....1ST APPLICANT

RAYFORD MUNYIRI.....2ND APPLICANT

BENEDICT KILONZO MWENGA.....3RD APPLICANT

AND

PETER MUNUVE MWANGANGI.....1ST RESPONDENT

PAULINA NGOMI MWANGANGI.....2ND RESPONDENT

(An application for injunction and stay of execution of the ruling and order of the High Court of Kenya at Nairobi (Sergon, J.) dated 2nd September 2015

in

H. C. C. A. No. 657 of 2011)

RULING OF THE COURT

1. Pursuant to a tenancy agreement between Benedict Kilonzo Mwenga, the 3rd applicant herein of the one part, and Peter Munuve Mwangangi and Paulina Ngomi Mwangangi, the respondents herein, of the other part, the 3rd applicant was in possession of the premises known as L.R. No 209/8313, Industrial Area, Nairobi from where he operated a business. The respondents later notified the 3rd applicant of their intention to terminate his tenancy, so he filed a reference against them in the Business Premises Rent Tribunal. That reference was dismissed; the 3rd applicant appealed against the order of the Tribunal to the High Court, and that appeal was also dismissed. Thereafter, the respondents filed an application for eviction of the 3rd applicant, and in a ruling dated the 2nd September 2015, the High Court issued an order to evict the 3rd applicant from the premises.

2. By way of a notice of motion application dated the 17th September 2015, Gibson Munyiri and Rayford Munyiri, the 1st and 2nd applicants, seek (*inter alia*) an order to stay the execution of that order of eviction pending the hearing and final determination of an intended appeal. The grounds upon which those orders are sought are that the intended appeal is arguable; the applicants contend that the suit property was registered in the name of the late Esther Njoki Muigai, their deceased mother, and the respondents had no interest in the suit property, and the order in their favour was granted without any basis. The applicants also contend that if the order of eviction is executed, they will be kept out of their property, thus denying them and the beneficiaries of the estate of the deceased from enjoying an interest in the suit property, and occasioning them loss and damage.
3. In response to the application, the respondents filed a notice of preliminary objection based on four main grounds: that this court has no jurisdiction to hear either the application or the appeal because the judgment complained of arose from a decision of the Business Premises Rent Tribunal; that the 1st and 2nd applicants have no *locus standi* to bring this application because they were not parties to the proceedings in the Tribunal or the High Court; that the application for an order of stay of execution is incompetent and an abuse of the court process; and that the application has been overtaken by events since the 3rd applicant was evicted from the suit premises on the 6th April 2016.
4. The preliminary objection was heard before us on the 15th June 2016. Mr. Nzamba Kitonga, learned senior counsel for the respondent argued that this Court has no jurisdiction to entertain this application because the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (the Act) provides that the decision of the High Court is final. He submitted, therefore, that the notice of appeal filed against the ruling of the court is incompetent and should be struck out. Learned counsel further argued that the 1st and 2nd applicants, who were not parties to the suit in the High Court, could not be granted standing in the appeal, and that the application had since been overtaken by events because the 3rd applicant was evicted and the suit premises leased to a third party.
5. Mr. Andrew Ombwayo, learned counsel for the 1st and 2nd applicants urged us to dismiss the preliminary objection. He submitted that the 1st and 2nd applicants are the legal representatives of the deceased, and they have a right to make a claim with respect to suit premises which forms part of the deceased's estate. He urged us to consider that this Court has wide latitude to enjoin any party who has an interest that should be protected by the Court. He further contended that the application is not an abuse of the court process as its essence is to preserve the subject matter. He therefore prayed that the preliminary objection be overruled with costs.
6. In the *locus classicus* case of *Mukisa Biscuits Manufacturing Co. Ltd Vs West End Distributors [1969] EA 696*, Law, J.A., 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. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
7. The point of law pleaded by the respondents is that this Court does not have jurisdiction to entertain this application and the intended appeal because section 15 of the Act precludes such an appeal.
8. In *Owners of Motor Vessel „Lilian S? [1989] 1 at 14* Nyarangi, J.A. rightly stated, of jurisdiction:

“... 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 lays down tools in respect of the matter before it the moment it

holds the opinion that it is without jurisdiction.”

9. The relevant provisions of section 15 of the Act read as hereunder:

“(1) Any party to a reference aggrieved by any determination or order of a Tribunal made therein may, within thirty days after the date of such determination or order, appeal to the Environment and Land Court:

...

(4) The procedure in and relating to appeals in civil matters from subordinate courts to the Environment and Land Court shall govern appeals under this Act:

Provided that the decision of the Environment and Land Court on any appeal under this Act shall be final and shall not be subject to further appeal. (emphasis ours)

10. It is quite clear from that section that the order of the Tribunal can be appealed against to the Environmental and Land Court; the decision of that court is, however, final. We therefore agree with respondents’ learned senior counsel that this Court does not have jurisdiction to entertain this application. We must take no further step towards its determination and must now down our tools. In the premises, the respondents’ preliminary objection be and is hereby upheld with the result that the application dated the 17th September 2015 is incompetent and it be and is hereby struck out with costs to the respondents. In the same vein, the notice of appeal against the ruling of Serگون, J. cannot stand either, and we order that it be and is hereby similarly struck out.

11. Orders accordingly.

Dated and Delivered at Nairobi this 22nd day of July, 2016.

P. KIHARA KARIUKI, PCA

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JUDGE OF APPEAL

P. M. MWILU

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR